IN THE HIGH COURT FOR THE STATE OF TELANGANA

Criminal Petition No.6580 of 2022

Between:
M/s Vasudha Pharma Chem Ltd.,
reptd by M.V.Rama Raju
and eight others.

... Petitioners

And

The State of Telangana,

through Special Public Prosecutor,

Central Bureau of Narcotics,

Hyderabad.

... Respondent

JUDGMENT PRONOUNCED ON 23.8.2022

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether her Lordship wishes to see the fair copy of the Judgment? : Yes

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Dr. JUSTICE CHILLAKUR SUMALATHA

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> Head Note:

! Counsel for the Petitioner: Mr. V.Gopala Krishn Gokhela

^ Counsel for Respondent: Special Public Prosecutor

For Central Bureau of Narcotics

? Cases Referred:

1. *(2010) 12 SCC 495*
2. *AIR 2013 SC 357*
3. *(2009) 11 SCR 470*
4. *AIR 2001 SC 137*

5. 1992 SCC (Crl.) 426

HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.6580 of 2022

ORDER:

The petitioners, seeking to invoke Section 482 Cr.P.C. and to quash the proceedings that are initiated and are pending against them in Sessions Case No.47 of 2014 before the Court of Metropolitan Sessions Judge-cum-Special Judge for NDPS Cases, Cyberabad at L.B.Nagar, Hyderabad, moved the present Criminal Petition.

2. The petitioners herein are arrayed as accused Nos.1 to 9 in the said Sessions Case.

3. Heard Sri V.Gopala Krishna Gokhale, learned counsel for the petitioners and also Sri U.L.N.Sudhakar, Special Public Prosecutor for Central Bureau of Narcotics. Also gone through the contents of the written submissions made by the learned counsel for the petitioners and further, perused the contents of the decisions relied upon.

4. The matrix of the case, as could be perceived through the contents of the complaint, is that information was received by the Preventive and Intelligence Cell, Central Bureau of Narcotics, Ujjain, regarding illegal manufacture of Fentanyl Transdermal Patches by M/s Sparsha Pharma International Private Limited. On that, the Drug Controller General (India), New Delhi was contacted to know the names of the parties to whom drug manufacturing licenses for Fentanyl base, Fentanyl Citrate or Fentanyl Patches have been issued. On the basis of the reports received from various states, it was ascertained that M/s Sparsha Pharma International Private Limited (accused No.10) is procuring Fentanyl Active Pharmaceutical Ingredient and manufacturing Fentanyl Transdermal Patches on the basis of drug manufacturing license, possession license and transport permits issued by A.P. State Drug Administration, but without obtaining any quota allocation and license for manufacture of the said narcotics drug from the Narcotics Commissioner, Central Bureau of Narcotics, Gwalior which is mandatory. On

that, a team led by the Superintendent (SIB), Central Bureau of Narcotics, Gwalior inspected the manufacturing unit of M/s Sparsha Pharma International Private Limited from 25.3.2013 to 27.3.2013. During the inspection, it was found that M/s Sparsha Pharma International Private Limited (accused No.10) has been procuring Fentanyl Active Pharmaceutical Ingredient from M/s Vasudha Pharma Chem Limited, Hyderabad (accused No.1). On enquiry, it was learnt that accused No.1 is manufacturing Fentanyl Base (Active Pharmaceutical Ingredient) without obtaining necessary license for manufacture of the said narcotics drug from the Narcotics Commissioner. On that, the said company – M/s Vasudha Pharma Chem Limited, Hyderabad was inspected on 28.3.2013. Accused No.5 who is the Director (Commercial) and accused No.9 who is the Head of the Manufacturing Works of M/s Vasudha Pharma Chem Limited, Hyderabad, in their statements disclosed that M/s Vasudha Pharma Chem Limited, Hyderabad (accused No.1) is manufacturing the narcotic drug on the basis of drug manufacturing license,

possession license and transport permits issued by the State Drug Administration and that, they were not aware of the additional requirement to obtain manufacturing license from the Narcotics Commissioner, Gwalior. The inspection team verified the stock which is found in an almirah and sealed the said almirah and also the room.

5. The inspection team thus found that accused No.1 is manufacturing Fentanyl Base Active Pharmaceutical Ingredient and Fentanyl Citrate on the basis of drug manufacturing license, possession license and transport permits issued by the State Drug Administration, but without obtaining necessary license from the Narcotics Commissioner, Gwalior, which is a mandatory requirement under Rule 37 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter be referred to as "the NDPS Rules" for brevity). Thereafter, on 04.6.2013, the complainant with his team visited the premises of accused No.1 after securing two independent witnesses, opened the seal and lock of the room, where the stock was kept and drew samples. The stock was seized. In the light of the information furnished by the

Chairman and Managing Director of accused No.1-company and other staff that minimum temperature is required to be maintained for the efficiency of the said narcotic drug which is used to treat acute cancer patients, the seized bags were kept in the same almirah after drawing the samples. The room was also locked and sealed. The keys were handed over to accused No.3. Seizure memo was prepared in the presence of the independent witnesses. Thereafter, a report under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter be referred to as "the NDPS Act" for brevity) was forwarded to the Assistant Narcotics Commissioner, Gwalior.

6. The investigation done established that M/s Vasudha Pharma Chem Limited (accused No.1) supplied Fentanyl Base (Active Pharmaceutical Ingredient) only to M/s Sparsha Pharma International Private Limited (accused No.10). M/s Vasudha Pharma Chem Limited (accused No.1) had obtained possession certificate and supplied the consignments basing on the manufacturing license obtained from the A.P. Drug

Control Administration. But, it failed to obtain the mandatory license under Rule 37 of the NDPS Rules from the Narcotics Commissioner, Gwalior. However, the said company has maintained the records regarding manufacture and sale. As per Rule 39 of the NDPS Rules, the Narcotics Commissioner cannot issue a manufacturing license under Rule 37, unless the applicant has produced the manufacturing license issued by the State Drug Control Agency under the provisions of the Drugs and Cosmetics Act, 1940. During the course of investigation, it has come to light that for manufacture of pharmaceutical drug, a manufacturing license issued under the Drugs and Cosmetics Act, 1940 by the respective State Drug Control Administrations is required and it is true that accused No.1 is in possession of this license, which is issued under the Drugs and Cosmetics Act, 1940, for manufacturing of Fentanyl. A valid manufacturing license issued under the Drugs and Cosmetics Act, 1940 by the State Government Authorities and a possession license issued by the authorities concerned of the State Government are the pre-requisite

documents to be produced before the Narcotics Commissioner of Central Bureau of Narcotics while applying for issuance of manufacturing license under Rule 39 of the NDPS Rules. Though M/s Vasudha Pharma Chem Limited, Hyderabad (accused No.1) had valid license under the Drugs and Cosmetics Act, 1940, it has not obtained manufacturing license from the Narcotics Commissioner and started manufacturing of narcotic drugs-Fentanyl Base (Active Pharmaceutical Ingredient) and Fentanyl Citrate and sold the same to accused No.10-M/s Sparsha Pharma International Private Limited. Thus, the accused rendered themselves liable for punishment.

7. Basing on the aforesaid averments of the complaint, cognizance was taken against accused Nos.1 to 11 for the offences punishable under Sections 8(c) read with Section 21 and Section 38 of the NDPS Act. Subsequently, charges were framed against all the accused for the offences punishable under Section 8(c) read with 21, and Sections 29 and 38 of the NDPS Act.

8. While the trial was in progress, accused Nos.1 to 9 have filed the present Criminal Petition seeking to quash the said proceedings.

9. When the learned counsel for the petitioners started arguing the matter, a query was posed by this Court as to why the present Criminal Petition for quash of proceedings is filed after commencement of trial and why not before. For the said query, the answer of the learned counsel for the petitioners is that though the material irregularity was apparent on the face of record, yet the petitioners were not totally aware whether the required procedure was followed or not, and that, only after the material witnesses were examined by the prosecution, the petitioners could know definitely that the procedure as required under law was not followed at all and that, even on merits, the case does not stand and hence, the petitioners moved the present Criminal Petition for quash of proceedings.

10. Arguing at length in respect of merits of the case, the learned counsel for the petitioners contended that accused No.1 was carrying on the business on the basis

of drug manufacturing license, possession license and transport permits issued by the State Drug Administration, Department of Health, Government of the then undivided Andhra Pradesh. Learned counsel submitted that accused No.1 obtained drug license in Form-25 from A.P. State Drug Control Administration and the said license was granted under Rule 70 of the Drugs and Cosmetics Rules, 1945 to manufacture certain drugs for sale or for distribution. Learned counsel further submitted that accused No.1 also received NDPS license-I which was issued under Rule 93(1) of the NDPS Rules and by the said license, accused No.1 is entitled to possess and sell, otherwise than on prescription manufactured drugs and to manufacture drugs other than prepared opium and cocoa leaf. Learned counsel states that by virtue of the said license, accused No.1 was permitted to have 20 kgs of Fentanyl and 20 kgs of Fentanyl Citrate in its possession.

11. Learned counsel further submitted that the State Government is empowered to issue license and that, the permit, if any, to be issued by the Central Authority i.e.,

the Central Bureau of Narcotics, Gwalior would be based on the license and permit issued by the State authority and the requirement to obtain necessary approval thus from the Central Bureau of Narcotics, Gwalior is only a formality. Learned counsel also submitted that on issuing license by the State Government, a copy of the same would be sent to Central Bureau of Narcotics, Gwalior and the Central Bureau of Narcotics, Gwalior would maintain a record to that effect. Learned counsel contended that at no point of time, the Central Bureau of Narcotics, Gwalior raised any objection. Indeed, even copies of license and transport permits issued by the A.P. State Drug Administration to accused No.1-M/s Vasudha Pharma Chem Limited, Hyderabad were sent to the Central Bureau of Narcotics, Gwalior from time to time by the State Drug Administration and that, at no point of time, those transport permits were either cancelled or objected by the Central Bureau of Narcotics, Gwalior. That fact itself goes to show that the Central Bureau of Narcotics, Gwalior was having adequate and sufficient knowledge with regard to the license and permits issued

to accused No.1 by the A.P. State Drug Administration. Learned counsel submits that having indirectly consented to the manufacturing license, possession license and transport permits issued by the A.P. State Drug Administration, all of a sudden, basing on some political issues, the company of accused No.1 was taken to task and the entire episode was created to put the said company into trouble and to drag the concerned to the Courts of law. Learned counsel further submitted that the allegation of the complainant is that the accused have not followed the prescribed procedure envisaged under the NDPS Rules, but, indeed while initiating the proceedings, the complainant himself has not followed the mandatory procedure that is required to be followed under the NDPS Act, which is most unjustifiable and that itself goes to show that only to harass the petitioners, the proceedings are initiated.

12. Learned counsel for the petitioners submitted that the complaint filed by the respondent-complainant is not sustainable under law and the same is liable to be quashed for the reason that the officer who is exercising

the power under Sections 41 and 42 of the NDPS Act can enter, search, seize and arrest only after taking down the information in writing and thus, the acts of enter, search, seizure and arrest shall be preceded by taking down the information in writing and the same is mandatory as declared by the Hon'ble Apex Court in catena of its decisions. But, in the case on hand, P.W-1 entered the premises of accused No.1, inspected and passed restraint order without taking down the information or reducing the information into writing and thus, there is non-compliance of the mandatory requirement which vitiates the entire trial.

13. For a better understanding of the points raised by the learned counsel for the petitioners, Section 42 of the NDPS Act, as amended by Act 9 of 2001, which came into effect from 02.01.2001, is extracted as under:-

> "42. Power of entry, search, seizure and arrest without warrant or authorization-—
>
> (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 license 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.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

14. Thus, it is abundantly clear that if the officer empowered has got a reason to believe either from his own knowledge or information received, which is taken down in writing, that any narcotic drug or psychotropic substance or control substance in respect of which an offence punishable under the NDPS 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 the NDPS Act is kept or concealed in any building, conveyance or enclosed place, he may between sunrise and sunset enter into and search such building, conveyance or place and seize the material. He may also detain, search and arrest any person whom he has reason to believe to have committed any offence punishable under the NDPS Act.

15. The aforesaid Section further lays down that where such officer takes down the information in writing or record grounds for his belief, he shall within 72 hours

send a copy thereof to his immediate official superior. Thus, the above provision makes it crystal clear that as soon as the information is received, the mandatory requirement is to take down the said information in writing. Secondly, a copy of such information which is reduced into writing shall be sent to the immediate superior officer within 72 hours.

16. Law has much evolved in respect of the above provision i.e., Section 42 of the NDPS Act.

17. Catena of decisions were produced and relied upon by the learned counsel for the petitioners holding that the procedure required to be followed under Section 42 of the NDPS Act is mandatory in nature and non-following the required procedure vitiates the proceedings.

18. The first decision that is relied upon by the learned counsel for the petitioners is the one that is rendered by the Hon'ble Apex Court in the case between ***State of Karnataka and Dondusa Namasa Baddi***[1], wherein discussing the effect of non-compliance of

[1] (2010) 12 SCC 495

Section 42 of the NDPS Act, the Court at paras 3 and 4 of the judgment observed as follows:-

> "3. Concededly in the present matter, no information was taken down in writing by the police officer or conveyed to the immediate police officer. Shri A.K. Mishra, the learned State counsel has, however, forcefully argued that there was evidence in the oral evidence of P.W. 10, the investigating officer, that he had complied the formalities enjoined by Section 42(2).
>
> 4. It is not the case of the prosecution that sufficient time was not available to record the information in writing and send it to the superior officer and in the face of it, we are of the opinion that any oral evidence of the police officer will not be in compliance with the provisions of Section 42(2) of the Act."

19. The second decision that is relied upon by the learned counsel for the petitioners is also of the one that is rendered by the Hon'ble Supreme Court in the case between ***Kishan Chand Vs. State of Haryana***[2], wherein dealing with the same aspect, the Court at paras 18 to 22 of the judgment held as under:-

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[2] AIR 2013 SC 357

"18. Following the above judgment, a Bench of this Court in the case of Rajinder Singh {(2011) 8 SCC 130} took the view that total non-compliance of the provisions of Sub-sections (1) and (2) of Section 42 of the Act is impermissible but delayed compliance with a satisfactory explanation for delay can, however, be countenanced.

19. The provisions like Section 42 or 50 of the Act are the provisions which require exact and definite compliance as opposed to the principle of substantial compliance. The Constitution Bench in the case of Karnail Singh {(2009) 8 SCC 539} carved out an exception which is not founded on substantial compliance but is based upon delayed compliance duly explained by definite and reliable grounds.

20. While dealing with the requirement of complying with the provisions of Section 50 of the Act and keeping in mind its mandatory nature, a Bench of this Court held that there is need for exact compliance without any attribute to the element of prejudice, where there is an admitted or apparent non-compliance. The Court in the case of State of Delhi v. Ram Avtar @ Rama {(2011) 12 SCC 2071}, held as under:

"26. The High Court while relying upon the judgment of this Court in Baldev Singh and rejecting the theory of substantial compliance, which had been suggested in Joseph Fernandez, found that the intimation did not satisfy the provisions of Section 50 of the Act. The Court reasoned that the expression "duly" used in Section 50 of the Act connotes not substantial" but "exact and definite compliance". Vide Ext. PW 6/A, the Appellant was informed that a gazetted officer or a Magistrate could be arranged for taking his search, if he so required. This intimation could not be treated as communicating to the Appellant that he had a right under law, to be searched before the said authorities. As the recovery itself was illegal, the conviction and sentence has to be set aside.

27. It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance therewith should be strictly construed. As already held by the Constitution Bench in Vijaysinh Chandubha Jadeja, the theory of "substantial compliance" would not be applicable to such situations,

particularly where the punishment provided is very harsh and is likely to cause serious prejudice against the suspect. The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance therewith must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given to the suspect. If such information in incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act. Non-compliance with the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial."

21. When there is total and definite non compliance of such statutory provisions, the

> question of prejudice loses its significance. It will per se amount to prejudice. These are indefeasible, protective rights vested in a suspect and are incapable of being shadowed on the strength of substantial compliance.
>
> 22. The purpose of these provisions is to provide due protection to a suspect against false implication and ensure that these provisions are strictly complied with to further the legislative mandate of fair investigation and trial. It will be opposed to the very essence of criminal jurisprudence, if upon apparent and admitted non compliance of these provisions in their entirety, the Court has to examine the element of prejudice. The element of prejudice is of some significance where provisions are directory or are of the nature admitting substantial compliance. Where the duty is absolute, the element of prejudice would be of least relevancy. Absolute duty coupled with strict compliance would rule out the element of prejudice where there is total non-compliance of the provision."

20. The third decision that is relied upon is also of the Hon'ble Apex Court in the case between ***Karnail Singh Vs. State of Haryana***[3]. This case is dealt with by

[3] (2009) 11 SCR 470

the Constitutional Bench to resolve the issue that arose due to the decision in the case between Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat {(2000) 2 SCC 513}, wherein a three-Judge Bench of the Hon'ble Apex Court held that compliance of Section 42 of the NDPS Act is mandatory and failure to take down the information in writing and forthwith send a report to his immediate superior officer would cause prejudice to the accused, and the decision of the another three-Judge Bench in the case between Sajan Abraham Vs. State of Kerala ((2001) 6 SCC 692}, wherein it was held that Section 42 of the NDPS Act was not mandatory and substantial compliance was sufficient. The Constitutional Bench elaborately discussed the legal position and holding that the decisions rendered by the coordinating Benches are not contradictory, expressed its opinion at para 17 of the judgment as under:-

> "17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and

42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of Section 42 from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of Clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per Clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the

entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of Sub-Sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the

> official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

21. Thus, in the case hand, it has to be seen whether there is at least substantial compliance of Section 42 of the NDPS Act.

22. The entire version of the prosecution is that on the basis of information gathered regarding illegal manufacture of Fentanyl Transdermal Patches by M/s Vasudha Pharma Chem Limited (accused No.1), the matter was taken up with the Drug Controller General (India), New Delhi and after receiving sufficient information from the Drug Controller General (India), New Delhi, regarding the names of the parties to whom the drug manufacturing licenses for manufacture of Fentanyl base, Fentanyl Citrate or Fentanyl Patches have been issued, it was ascertained that M/s Sparsha Pharma International Private Limited (accused No.10) is procuring Fentanyl Active Pharmaceutical Ingredient

from M/s Vasudha Pharma Chem Limited (accused No.1) and is manufacturing Fentanyl Transdermal Patches on the basis of Drug manufacturing license, possession license and transport permits issued by the A.P. State Drug Administration, but without obtaining any quota allocation and license from the Narcotics Commissioner, Central Bureau of Narcotics, Gwalior. On that, a team was formed and the manufacturing units of M/s Sparsha Pharma International Private Limited (accused No.10) were inspected by the said team and later, on being learnt that M/s Vasudha Pharma Chem Limited, Hyderabad (accused No.1) is manufacturing Fentanyl base without obtaining license from Narcotics Commissioner, Gwalior, the inspection team visited the said company and seized the stock. No where, at least a bare averment is made that the information received is reduced into writing as required under Section 42 of the NDPS Act.

23. The team leader who is examined as P.W-1 gave evidence to the effect that as per the directions of the Narcotics Commissioner, Gwalior, to inspect the premises

of M/s Vasudha Pharma Chem Limited, Hyderabad (accused No.1), he along with his team visited the said premises and found that without obtaining manufacturing license to manufacture Fentanyl Citrate, the same is being manufactured and on that, he passed a restraint order not to sell, shift or transport the said product from the premises. He did not state anything about the information received and why he could not reduce the information into writing. Pertinently, during the course of cross-examination, he stated that even the restraint order does not disclose the receipt of information by their office.

24. Thus, the afore-mentioned facts makes it abundantly clear that the required procedure as laid down under Section 42 of the NDPS Act is not followed. It is not the case of the prosecution that there was no possibility to follow the mandatory procedure as laid down under Section 42 of the NDPS Act or that, due to the reasons given, the required procedure was not followed. No reasons whatsoever are accorded. To prevent abuse of process of law, when a particular procedure is

prescribed by the legislature and when the persons at the helm of affairs who are under obligation to follow the said procedure in its letter and spirit have not followed the same, it has to be held that the proceedings initiated without following the said procedure are unsustainable under law.

25. Making a submission that when the required procedure is not followed, the Courts are well empowered to exercise their power under Section 482 Cr.P.C. and to quash the proceedings, the learned counsel for the petitioners relied upon the decision of the Hon'ble Apex Court in the case between ***Roy V.D. Vs. State of Kerala***[4] wherein the Court at para 18 of the judgment held as under:-

> "18. It is well settled that the power Section 482 of the Cr. P.C. has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence bases on such material

[4] AIR 2001 SC 137

> but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 of the Cr. P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

26. The petitioners have clearly projected and established that the procedure required under the NDPS Act, more particularly under Section 42 was not followed by the respondent. When law mandates doing of a particular thing in a particular way, it has to be followed and deviation, if any, should be curtailed. At least, if any valid reasons are assigned which prevented the complainant to deviate from the mandatory requirement, there would have been some consideration for the Court to view the same. But, in the case on hand, the procedure required to be followed is not followed, though sufficient opportunity and time was available to the respondent for following the said procedure which is mandatory. It is not the case of respondent that there is substantial

compliance. Total non-compliance is apparent on the face of record. Therefore, this Court is of the view that the proceedings initiated against the petitioners are unsustainable in the eye of law.

27. Even on merits of the case, as rightly submitted by the learned counsel for the petitioners, the case does not stand.

28. P.W-1, who had played a major role, as per the version of respondent-complainant, in inspecting the premises of accused No.1, verifying the stock and passing a restraint order, during the course of his cross-examination strangely stated that he has not seen the contraband physically in the premises at the time of his inspection. He further stated that Ex.P-1 (letter dated 28.3.2013 addressed by Superintendent (SIB), Central Bureau of Narcotics to accused No.1-company) does not disclose the quantity of the drug available. He further deposed that the stock was accounted by the company as per the permission granted by the Government of A.P. He further stated that Ex.P-1 does not disclose the names of the officers who accompanied him. He also admitted that

the restraint order does not disclose the nature of the substance.

29. Another officer i.e., P.W-2 during the course of his cross-examination admitted that whenever transport permits for movement of narcotic drug is given, the same is marked to the Narcotics Commissioner, Gwalior. The said admission strengthens the version of the petitioners that though the transport permits, manufacturing license and possession license are issued by A.P. State Drug Administration, copies of the same will be remarked to the Narcotics Commissioner, Gwalior and on none of the occasions, any objection was raised that the drug is being manufactured without obtaining necessary permission from the Narcotics Commissioner, Gwalior. Further more, the evidence of P.W-1 is that he has not even seen the alleged drug at the premises of accused No.1. Therefore, it is not known whether the drug seized subsequently is the same drug that was observed by P.W-1 or not. The alleged mediators i.e., P.Ws.3 and 4, who went subsequently, i.e., at the time of lifting of samples, as per the version of the prosecution, failed to support the case

of the prosecution and they stated that about seven years back, when they were proceeding to their office, Police stopped them and obtained their signatures on some blank papers.

30. The learned Special Public Prosecutor for Central Bureau of Narcotics though contended that after completion of trial, the decision would be rendered by the competent Court, failed to state anything with regard to the grounds urged by the petitioners and the stand taken by them. He did not avert anything in respect of the procedure that is required to be followed and did not state whether the said procedure is indeed followed, or if not, as to why. Hence, the ultimate conclusion if any even by the trial Court would be nothing but the acquittal of the petitioners.

31. Envisaging that when a case for commencement and conclusion of trial is not made out, quash of proceedings is desirable, the Hon'ble Apex Court in the

case between ***State of Haryana Vs Bhajanlal***[5], at paras 108 and 109 of the judgment held as under:-

> **"**In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

[5] 1992 SCC (Crl.) 426

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

32. Thus, having regard to the aforesaid discussion and as the procedure required under Section 42 of the NDPS Act is not followed, which is apparent on the face of

record, this Court is of the view that quash of proceedings as prayed for is desirable.

33. Resultantly, the Criminal Petition is allowed. The proceedings that are initiated against the petitioners who are arrayed as accused Nos.1 to 9 in Sessions Case No.47 of 2014 that is pending on the file of the Court of Metropolitan Sessions Judge-cum-Special Judge for NDPS Cases, Cyberabad at L.B.Nagar, Hyderabad, are hereby quashed. The release of the seized drugs, however, shall be subject to the outcome of the decision of the trial Court in the said Sessions Case that would continue regarding the culpability of accused Nos.10 and 11.

34. As a sequel, pending miscellaneous applications, if any, shall stand closed.

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Dr.CHILLAKUR SUMALATHA, J

23.8.2022
Note:
LR copy to be marked.
B/o
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