

(2022)01ILR A15
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.12.2021

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Writ Petition No. 8403 of 2021
alongwith
Criminal Misc. Writ Petition No. 8370 of 2021

Vibhor Rana **...Petitioner**
Union of India & Anr. **...Respondents**
Versus

Counsel for the Petitioner:

Sri Nipun Singh, Sri Rishi Upadhyay, Sri Neelesh Ram Chandani, Sri Sumit Suri, Sri Gopal Swaroop Chaturvedi, Sri Anurag Khanna

Counsel for the Respondents:

Sri Pranay Krishna, Ashish Pandey, Special Public Prosecutor (NCB), Sri Arunendra Kumar Singh, A.G.A.

Narcotic Drugs & Psychotropic Substances, 1985 – Section 42 - Petitioners have been made distributor of drugs manufactured by Abbott Health Care Pvt. Ltd. Including Phensedyl New Cough Linctus-NCB seized 61000 bottles of Phensedyl New Cough Linctus Syrup-out of 5 batches seized- three batches distributed by Petitioners-absolutely no material on record to indicate that NCB had any reason to believe that seized consignment was of narcotic drug-and that he has power-pre-requisite for exercising power u/s 42 of NDPS Act- Phensedyl New Cough Linctus-not a narcotic drug-and any dealing in it-would not be subject to the provision of NDPS Act.

W.P. allowed. (E-9)

List of Cases cited:

1. Ashok Kumar Vs U.O.I., 2014 SCC OnLine All 16411
2. Bail No.13555 of 2021, Ajay Bajpai Vs St. of U.P.
3. St. of Pun. Vs Rakesh Kumar, (2019) 2 SCC 466
4. Hemant Kumar Saini Vs U.O.I., 2021 SCC On Line AII 497
5. Roger Shashoua Vs Mukesh Sharma, (2017) 14 SCC 722

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Both these Writ Petitions involve a common question i.e. whether Phensedyl New Cough Linctus Syrup is a Narcotic Drug and it comes within the purview of Narcotic Drugs and Psychotropic Substances Act (which will hereinafter be referred to as the NDPS Act"), therefore, both these Writ Petitions are being decided by a common judgment.

2. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Advocate and Sri Anurag Khanna, learned Senior Advocate assisted by Sri Nipun Singh, Shri Rishi Upadhyay, Sri Neelesh Ram Chandani and Sri Sumit Suri, Advocate learned counsel for the petitioner in Writ Petition No. 8403 of 2021 and Sri Navin Sinha, learned Senior Advocate assisted by Sri Raghav Dev Garg, Advocate, learned counsel for the petitioner in Writ Petition No. 8370 of 2021, Sri Ashish Pandey, Advocate, Special Public Prosecutor for Narcotic Control Bureau, Lucknow and Sri. Arunendra Kumar Singh, the learned A.G.A. for the State.

3. The petitioner in Writ Petition No. 8403 of 2021 is the sole proprietor of a proprietorship firm "G. R. Trading Company" (hereinafter referred to as the "Company") having its office at Saharanpur, which has been granted a license under Rules 61(1) and 61(2) of the Drugs Rules, 1945. The petitioner's company deals in the distribution of various pharmaceutical drugs and it has entered into an agreement with M/S Abbott Health Care Pvt. Ltd., under which the company has been made a super distributor to distribute more than 300 pharmaceutical drugs manufactured by Abbott Health Care Pvt. Ltd.

4. The petitioner in Writ Petition No.8370 of 2021 is the proprietor of a proprietorship concern by the name of "Sachin Medicos" having its registered office at Bajaria Road, First Floor, Thana Janakpuri, Saharanpur, which is a drug distribution company having license under Rules 61 (1) and 61 (2) of the Drugs Rules, 1945. Sachin Medicos deals in the distribution of various pharmaceutical drugs, including Phensedyl New Cough Linctus.

5. The dispute which gave rise to the filing of both the Writ Petitions, started on 17-01-2021, when a joint team of the Narcotic Control Bureau (which will hereinafter be referred to as "the NCB") and the Special Task Force Varanasi conducted a search and seized 61,000 bottles of Phensedyl New Cough Linctus Syrup from some location in district Jaunpur. These bottles of the cough syrup came from five different batches. Pursuant to the aforesaid seizure, some arrests were made by the NCB and a Case No. NCB-LZU-CR No. 04/21 was registered under the NDPS Act. The Investigating team has found that out of the five batches of Phensedyl New Cough Linctus Syrup, three batches have been distributed by G. R. Trading Company owned by Vibhor Rana and Sachin Medicos owned by Bittu Kumar.

6. The Intelligence Officer, NCB sent notices to G. R. Trading Company owned by Vibhor Rana and to Sachin Medicos owned by Bittu Kumar in purported exercise of powers conferred under Section 67 of the NDPS Act, summoning them to appear before him on 02-03-2021. The petitioner in Writ Petition No. 8403 of 2021 Vibhor Rana being the proprietor of G. R. Trading Company, appeared in response to the aforesaid notice and on 03-03-2021 his voluntary statement was recorded in which he inter alia stated that he is the proprietor of the company. He applied for a license in the year 2019 and he is a super distributor of M/S Abbott Health Care Pvt. Ltd. On being asked about Batch Nos. PHB0423, PHB0435 and PHB0440, he has given all the documents of these batches. He had sent the goods on 13-01-2021 and issued invoices and E-way bills and has received payments of the goods through RTGS in the bank account of the Company in Punjab National Bank, Main Ghantaghar Branch. The petitioner in Writ Petition No. 8370 of 2021 Bittu Kumar, being the proprietor of Sachin Medicos also recorded his voluntary statement which was on similar lines. Both the petitioners have filed copies of licences granted to them by the Food Safety & Drug Administration, U.P. District Saharanpur.

7. The petitioners have pleaded that they have appeared in response to further notices issued by the Intelligence Officer, NCB and provided all the relevant documents.

8. Section 42 of the NDPS Act confers the power of entry, search, seizure and arrest without warrant or authorisation in the following conditions: -

"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 personal 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 V-A 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 V-A 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:....."

9. There is absolutely no material on record to indicate that before entering the premises in Jaunpur and seizing therefrom 61,000 bottles of Phensedyl New Cough Linctus, the Officers of N.C.B. had any reason to believe that the consignment being seized was of a narcotic drug, and that he had power to seize the same, which is a pre-requisite for exercising the power under Section 42 of the NDPS Act.

10. Sri Gopal Swaroop Chaturvedi and Sri. Anurag Khanna, learned Senior Advocates appearing for the petitioner in Writ Petition No. 8403 of 2021 and Sri. Navin Sinha, learned Senior Advocate appearing for the petitioner in Writ Petition No. 8370 of 2021 have submitted that even though the petitioners have cooperated in the investigation, the investigation is being carried out by the respondent without jurisdiction as Phensedyl New Cough Linctus Syrup is neither a Narcotic drug nor is it a psychotropic substance and, therefore, it does not fall within the purview of the NDPS Act.

11. It is mentioned on the label affixed on the bottle of Phensedyl as also on the license of M/S Abbott Health Care Pvt. Ltd. that the prescription dosage of Phensedyl Cough Syrup is 5 ml and each dosage unit contains 10 mg of Codeine Phosphate IP, besides Chlorpheniramine Maleate I.P. Thus Phensedyl contains merely 0.2 % Codeine.

12. The petitioner has specifically pleaded that "the consignment which has been seized was sent to agencies licensed under Rule 61 (1) of the Drugs Rules, for therapeutic purposes. It is not the case of the prosecution agency that Phensedyl New Cough Linctus is a banned drug in the State of Uttar Pradesh. The same gets prescribed by various medical practitioners in normal course, which pleading has not been denied in the counter affidavit."

13. However, on 15-07-2021, the Intelligence Officer, NCB has filed a Complaint under Sections 8, 21 (c), 22, 25, 29 and 60 (3) of the NDPS Act in the Court of Special Judge, NDPS Act at Jaunpur against ten persons for the alleged illegal handling of Phensedyl Syrup. In the entire complaint, there is no averment that the alleged offending goods found with the accused persons are a narcotic substance and the accused persons were found to have committed any act which was in violation of the prohibition contained in Section 8 of the Act. Moreover, in the entire complaint there is absolutely no averment that the alleged offence falls within the purview of the NDPS Act and that it falls within the purview of jurisdiction of the Special Court. The relevant paragraphs of the complaint which make a mention of the goods seized and of its components, are being reproduced below: -

"32. That the original Samples marked as L1SI, L2SI, L3SI & L5SI have been sent to CRCL New Delhi vide letter no. NCB/LKO/III/INV/Seiz/04/2021/3670 dated 10.01.2021. The Chemical Examination report dated the samples under reference answer positive test for Codeine Phosphate."

"46. That, the Chemical report, dated 03.03.2021 vide F. No.I/ND/R/2020/CLD-1207 (N) to 1211 (N) which was received on 15.03.2021 from CRCL, New Delhi was sent to be served to the arrested above 08 accused persons individually through the Jail Superintendent Jaunpur, vide letter

NCE/LKO/III/SEIZ/04/2021/4252 dated 19.03.2021. The receipt of individual arrested persons from Jail Superintendent, Jaunpur has been received vide their letter No.137/U.T./2021 dated 03.04.2021, Lucknow (U.P.) was recovered at the time of said seizure on 17.01.2021. Hence, a follow up action was conducted at this firm by the NCB Lucknow along with Drug Department, Lucknow on 19.01.2021, related documents were collected and after scrutiny of documents, summoned the owner of this firm Girjesh Kumar to join the investigation. Statement u/s 67 of NDPS Act was recorded and due to non-availability of several documents and definite lead on that day, he was allowed to go but the investigation was kept open against him. Accordingly, keeping our investigation intact, a letter was also written to the Commissioner, FSDA, with the request to conduct an enquiry against this firm and if any anomaly or deviation observed, immediately be shared. After enquiry, the drug license of this firm was cancelled by the drug department on 20.03.2021 vide letter no.....202-21/364-4 on the grounds of its conscious and voluntary collusion in the illegal sale & illicit diversion of the seized consignment of Phensedyl Syrup by resorting to the illegal modus operandi of using the number of the cancelled drug license no. LKO-2016/20B/000563, LKO-2016/21B/000563 in place of the new drug license no. UP320B002511 & UP3221B002495 and knowingly selling scheduled H drug to physically non-existent firms by resorting to illegal sale & illicit diversion of 1,19,9000 bottles of Phensedyl Syrup in a period between 01/04/20 to 18/01/21 to Balaji Agency @ Varanasi, Vaijyanti enterprises Chandauli, Kunal Pharma Agra & Maa Ambey Medical Agency in whole sale only, and on 26.03.2021. During his confessional statement he confessed his conscious & voluntary collusion in this illegal sale & illicit diversion of the seized consignment of Phensedyl Syrup by resorting to the illegal modus operandi of using the number of the cancelled drug license in place of the new drug licence and consciously involving himself in selling & illicit trafficking of restricted schedule H drug @ seized consignment of Phensedyl Syrup to physically non-existent firms in close collusion with other con-accused & the suspects".

"50. That, 01 invoice bearing number PP-003775 dated 08.01.2021 of Palak Pharma, Shop No.118, BC Medicine Market, Naya Gaon, East, Aminabad, Lucknow (U.P.) was recovered at the time of seizure on 17.01.2021. Hence, a follow up was conducted at this firm by the NCB Lucknow along with Drug Department, on 18.01.2021, collected related documents and after scrutiny of documents summoned Pawan Singh on 27.01.2021 to join the investigation on 28.01.2021. Statement u/s 67 of NDPS Act of Pawan Singh was recorded and found that Pawan Singh is not the registered person of this firm, hence, statements of registered person were also recorded u/s 67 of NDPS Act but, due to non-availability of several documents and the leads, they were allowed to go but the investigation was kept open and a letter written to the Commissioner, FSDA with a request to conduct enquiry against firm and to share immediately if any anomaly or deviation observed. After enquiry, the drug licence of this firm was cancelled by the drug department on 20.03.2021 vide their letter no.../2020-21/364-4 on the grounds of its physical non-existence and its conscious and voluntary collusion in the illegal sale and illicit diversion of the seized consignment of Phensedyl Syrup by resorting to the illegal modus operandi of knowingly selling schedule H drug to physically non-existent firms by resorting to illegal sale and illicit diversion of 1,15,000 bottles of Phensedyl Syrup in a period between 01/04/20 to 01/02/21 to Balaji Agency @ Varanasi, Anika his father and he sent medical document regarding his treatment along with sale purchase details of Phensedyl Syrup of said invoice. 2nd notice sent on 13.04.2021 through speed post and he again sent on 30.04.2021, the medical documents regarding his treatment. 3rd notice was sent on 11.05.2021 through speed post, but again he sent medical treatment regarding his treatment along with sale purchase details of Phensedyl Syrup of said invoice. Statement of Pawan Singh was recorded on 02.06.2021. In his voluntary statement, he confessed his conscious & voluntary collusion in this illegal sale and illicit diversion of the seized consignment of Phensedyl Syrup by resorting to the illegal modus operandi of knowingly & regularly selling Phensedyl syrup in bulk, including 5000 bottles of seized Phensedyl Syrup vide invoice no. PP-0003775 dated 08.01.2021 to physically non-existent firms, Balaji Agency, Anika Pharmaceuticals and Parwati Traders."

"62. That, on the basis of seized invoices pertaining to Sachin Medicos Pharmaceuticals Distributors, Saharanpur at the time of seizure, a notice u/s 67 of NDPS was issued on 21.01.2021 to this firm with direction to report on 28.01.2021 and a follow up action conducted at Saharanpur with the help of local police, but this firm was found closed, hence, notice u/s 67 was affixed on it. A letter was received on 03.02.2021 from the owner of this firm that he had fallen ill due to cold and he would report this office immediately on recovery. 2nd notice was issued on 20.02.2021 with direction to report

on 02.03.2021 and this notice was affixed on the shutter of this firm due to closure of the said firm, along with Drug Inspector, Saharanpur on 25.02.2021. Bittu Kumar, the owner of Sachin Medicos joined the investigation on 02.03.2021, but due to non-availability of several documents pertaining to the suspected transaction, the investigation was kept open against him with direction to appear before the I.O. with all relevant documents for scrutiny & further needful action. Accordingly, 3rd notice u/s 67 was sent through DZU, but said notice was returned undelivered by DZU due to incomplete address. On 06.06.2021, a follow up action was conducted by the NCB Lucknow team at his residential address, but it was found that he left his village 05 years and is residing at an unknown place in Saharanpur City. Drug Deptt. Saharanpur after establishing his involvement in the illicit diversion of Codeine based Phensedyl Syrup, cancelled the license of this firm. On receipt of the required sale/purchase details in r/o Sachin Medicos, it was found that G. R. Traders Company sold these batches to 35 Roorkee & Bhagwanpur based firms, but on thorough scrutiny of the documents submitted by G. R. Trading Company, Saharanpur it came to notice that the sale which was made to 06 firms, located at Bhagwanpur, through Delhi Punjab Freight Carrier on 13.01.2021 as per invoices, was further sold to Sachin Medicos, Saharanpur on the same day by all six Bhagwanpur based firms through Badri Narayan Transport. But, as per the receipts copies of the sale invoices of these six firms, submitted by G. R. Trading Company, the consignment was received on 14.01.2021 by them. Thereafter, records of sale/purchase was sought from existing firms and as per the documents, submitted by these firms, it came to notice that all these firms sold the concerned batches of Phensedyl Syrup to only one firm i.e. **Sachin Medicos Pharmaceuticals Distributors, Saharanpur through physically non-existent transport companies on the same day i.e. on 13-01-21. Accordingly, a physical verification a/w the official of drug department was conducted on 05.06.2021 and it was found that 05 firms out of 35 are not existing physically and Life Medicos, Bhagwanpur submitted fake issue/receipt vouchers. Sachin Medicos, further sold the seized bottles of Phensedyl Syrup to various non-existent firms in Sultanpur, Varanasi & Chandauli through Kartik Roadlines. The physical verification of the transport agencies, viz. Delhi, Punjab Freight Carrier & Badri Narayan Roadlines, owned by Sanjeev Kumar Rathore, S/O Laxman Singh Rathore, has revealed that both these transport companies, which were used for the transport of Phensedyl Syrup for GR Traders to 35 other medical firms on 13.01.21, and, back to Sachin Medicos, on 13.01.21 itself in a time period of 04 hours only, are physically not existing. Efforts are being made to trace and involve him in investigation. As he could not join the investigation till now, hence, investigation is kept open against him. A prayer for NBW is also being filed against him in the Hon'ble Court.**

14. But in paragraph 76 of the complaint the respondent has stated that investigation against the main suspects - including the petitioner, is proposed to be kept open so that their role in the case may be properly established and supplementary complaint, if any, may be filed against them. The respondent has categorically stated in the complaint that the petitioner has reported to the NCB office and has tendered his voluntary statement and has given all the details regarding three batches which had originated from his firm.

15. The petitioner has pleaded that he had issued a purchase order to Abbott Health Care Pvt. Ltd. and made the due payments through bank transfer. In pursuance whereof Abbott Health Care Pvt. Ltd. issued three batches of Phensedyl New Cough Linctus on 22-12-2020, 04-01-2021 and 12-01-2021. In pursuance of the aforesaid, tax invoices were also raised by Abbott Health Care Pvt. Ltd. for all the three batches. The said consignments were then transported to the petitioner's firm. The petitioner had received purchase orders from 35 firms located in Uttarakhand, all of which have a license under Rules 61 (1) and 61 (2) of the Drugs Rules and a valid GST I.D. The petitioner raised invoices against the consignee firms and dispatched the consignments through Delhi Punjab Freight Carrier which had issued receipts to the petitioner for transporting the said consignments and had got generated E-way bills for transit of the said consignments. All the 35 firms paid the consideration amount to the petitioner through bank transfers thus establishing the legitimacy of the entire transaction. All the 35 firms have received the consignments and have made endorsements of receiving the goods on the receipts of the transport company As far as the petitioner is concerned, the transaction stood completed on the delivery of the consignments to the 35 purchaser firms which are based in Uttarakhand and if thereafter the

medicines supplied by the petitioner are found at Jaunpur, the petitioner is not responsible for the same in any manner. The respondent has alleged in the Complaint filed in the Court of Special Judge, NDPS Act, Jaunpur that during physical verification, five firms namely Shruti Medical Agency Bhagwanpur, Linke Health Care Bhagwanpur, R. D. Pharma, Bhagwanpur, Surya Health Care Agency Bhagwanpur and Om Medicos Bhagwanpur were found non-existent which allegation against the petitioner seems incomprehensible in view of the facts that all these five firms hold licenses under Rule 61 of the Drugs Act, copies whereof have been filed with the Writ Petition.

16. The Intelligence Officer, NCB has filed a counter affidavit in Writ Petition N. 8403 of 2021 inter alia stating that Phensedyl Syrup is a codeine based syrup and comes under the purview of manufactured drug as such it is covered under the NDPS Act. 61,000 bottles of 100 ml. Phensedyl syrup were recovered, the total weight of the syrup recovered is 8,235 Kg. and one of the contents in the syrup is codeine phosphate, covered under the NDPS Act and the commercial quantity provided under the Act is 1 Kg and the seized quantity is much above the commercial quantity. Section 80 of the NDPS Act, provides that "The provisions of this Act or the Rules made there under shall be in addition to, and not derogation of the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder. In light of aforesaid provision the provisions of NDPS Act shall also applicable on Drugs and Cosmetics Act. The petitioner is engaged in illicit sale, purchase and diversion of Phensedyl in violation of Section 8 of NDPS Act, which prohibits possession of narcotic substances, narcotic drugs or psychotropic substance except for medical or scientific purposes in accordance with the relevant provisions of law and as such possession, sale and purchased of codeine bases syrup for non therapeutic and non medical uses is illegal and hence provisions of NDPS Act shall be attracted. The license issued by the competent authority to the petitioner company is for the therapeutic and medical use only and not for the use of intoxication or for getting a stimulant effect. Any diversion or illegal sale, purchase and possession of narcotic drugs intended for medical uses must attract. Section 80 of NDPS Act read with Section the 2 of Drugs and Cosmetics Act provides for investigation of the case under the NDPS Act, thus, the provisions of NDPS Act can be applied along with the provisions of the Drugs and Cosmetics Act. The drug and Cosmetics Act deals with the drugs which are intended to be used for therapeutic or medical uses, and on the other hand the NDPS Act intends to curb and penalize the use of narcotic drugs which are used for intoxication or for getting a stimulant effect. The diversion and illegal sale, purchase and possession of Phensedyl syrup which is a narcotic drug attracts the provisions of NDPS Act. According to the provisions of Section 80 of NDPS Act and Section 2 of the Drugs and Cosmetic Act, the proceeding can be initiated and the investigation can be made under the provisions of NDPS Act.

17. Sri Ashish Pandey, learned Special Public Prosecutor (NCB) has submitted that Phensedyl syrup is a Codeine based drug, therefore, it is a narcotic drug. It is a case of illegal diversion of narcotic drug, therefore, the provisions of NDPS Act would apply to the present case. The Narcotic Control Bureau, had made a seizure 6,100 bottles of Phensedyl Syrup from a godown in Jaunpur and there was no license for storage of the drug in that godown.

18. Now we proceed to examine the relevant provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 to ascertain whether Phensedyl New Cough Linctus is a Narcotic Drug, which would come under the purview of the NDPS Act.

19. The Narcotic Drugs and Psychotropic Substances Act, 1985 has been enacted with the object to "consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic substances and for matters connected therewith." As the object of the Act suggests, it deals with narcotic drugs and psychotropic substances only and unless the offending substance is a narcotic drugs or a psychotropic substance, the provisions of the NDPS Act will not apply.

20. Section 2 of the NDPS Act contains definitions and the following definitions are relevant for adjudicating the dispute involved in the present case: -

(xi) **"manufactured drug"** means--

(a) all coca derivatives, medicinal cannabis, **opium derivatives** and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug,

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;

(xiv) **"narcotic drug"** means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;

(xv) "opium" means--

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,

but does not include any preparation containing not more than 0.2 per cent of morphine;

(xvi) **"opium derivative"** means--

(a) medicinal opium, that is, opium which has undergone the processes necessary to adopt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts:

(d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent of morphine or containing any diacetylmorphine;

8. Prohibition of certain operations.--No person shall--

(a)

(b)

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship **any narcotic drug** or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

....."

21. The position which emerges from a combined reading of the above quoted definitions is that as per Section 2 (xvi) (c) of the Act, codeine and its salts are "opium derivatives". As per Section 2 (xi) (a), opium derivatives are included in "manufactured drugs" and as per Section 2 (xiv) all manufactured drugs are included in the definition of "narcotic drugs", unless the same falls within the exception appended to Section 2 (xi) providing that **"but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug"**.

22. On 14-11-1985 the Government of India had issued a notification No. 826 (E) dated 14.11.1985 and S.O. 40 (E) dated 29-01-1993 containing the list of narcotic drugs and Entry 35 thereof is as follows:-

"Methyl morphine (commonly known as "Codeine") and Ethyl morphine and their salts (including Dionine), all dilutions and preparations **except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice.**"

(emphasis supplied)

23. Thus, as per the aforesaid Notification, if any drug contains not more than 100 milligrams of Methyl Morphine, which is commonly known as Codeine, per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a "Manufactured Drug" and, therefore, it will not be a "Narcotic Drug".

24. The prohibition contained in Section 8 of the Act is applicable to "Narcotic Drugs" and since Phensedyl New Cough Linctus contains Codeine compounded with one other ingredient, namely Chlorpheniramine Maleate and since Phensedyl New Cough Linctus contains merely 10 milligrams per dosage unit of 5 ml, which is not more than 100 milligrams of the drug per dosage unit in undivided preparations and the concentration of Codeine in Phensedyl New Cough Linctus is merely 0.2%, which obviously is not more than 2.5% and which has been established in Therapeutic practice, it is not a "Manufactured Drug" and, therefore, it is not a "Narcotic Drug", the prohibition contained in Section 8 of the Act does not apply to it.

25. Phensedyl New Cough Linctus contains Codeine which is mentioned at Serial Number 20 in Schedule H1 appended to the Drugs Rules, 1945 and a note appended to Schedule H1 provides that "Preparations containing the above drug substances and their sales excluding those intended for topical or external use (except ophthalmic and ear or nose preparations) containing above substances are also covered by this Schedule". Therefore, Phensedyl New Cough Linctus is a drug covered by the Drugs and Cosmetics Act, 1940.

26. To clarify this position, on 26.10.2005 the Drug Controller General of India had written letter to all the State Drugs Controllers stating as follows:-

"As you are aware there are number of Cough preparations like Corex of M/s Pfizer Ltd. Mumbai, Phensedyl of M/s. Nicholas Piramal India Limited, Mumbai, Codokuff of M/S. German Remedies, Codeine Linctus of M/s Zydus Alidac etc. moving in inter state commerce. These preparations contain among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and its salts they do not fall under the provisions of NDPS Act and Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetics Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of NDPS Act and Rules 1985 however these formulations are prescription drugs and are to be dispensed on the prescription of a registered Medical Practitioner only. Further you may be already aware that under notification number S.O. 826(E) dated 14th Nov. 1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985 certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no.35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."

27. In March 2009 the Drugs Controller General (India) had issued a letter to the Associated Chambers of Commerce and Industry of India in response to a request for clarification of drug substance Cough Linctus containing codeine Phosphate stating that:-

"In this connection this Directorate had already issued a circular letter vide our letter number X-11029/27/05-D dated 26/10/2005 to all State Drugs Controllers with a copy to various associations and a copy Narcotic Control Bureau New Delhi (copy enclosed). The above circular inter alia stated that these preparations (Cough Linctus containing Codeine Phosphate) contains among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and its salts they do not fall under the provisions of NDPS Act and the Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetic Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of NDPS Act and Rules 1985, however these formulations are prescriptions drugs and are to be dispensed on the prescriptions of a registered Medical Practitioner only.

Further you may be aware that under notification number S.O.826 (E) dated 14th November, 1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985 certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no. 35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice. "

28. Learned counsel for the petitioner has placed reliance on a judgment of an Hon'ble Single Judge of this Court in **Ashok Kumar Vs. Union of India, 2014 SCC OnLine All 164111**, in which the following categorical findings have been recorded after going through all the relevant provisions of law:

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"101. Considering the above noted discussion, relevant provisions of N.D.P.S. Act and Rules, relevant provisions of D & C Act and Rules, judgments rendered by various Courts and documents appended with the petition which have neither been disputed nor controverted referred to hereinabove, this Court concludes as follows:

(i) Even if all the facts and circumstances alleged by the prosecuting agency are admitted to be correct, it cannot be said that the petitioner, who was serving as Territory Sales Manager in M/s Abbott Healthcare Pvt. Ltd. (manufacturer of Phensedyl Cough Syrup), Division at Lucknow, in any way abetted or conspired to commit offence under section 8 of the N.D.P.S. Act as punishable under section 21 of the said Act. It was the duty of the petitioner to procure orders of Phensedyl Cough Syrup from licenced stockists or distributors and ensure its supply from licenced manufacturer viz; employer of the petitioner.

(ii) Phensedyl Cough Syrup is a Schedule 'H' drug under the Drugs and Cosmetics Act; has been manufactured by M/s Abbott Healthcare Pvt. Ltd. a licenced manufacturer under the D & C Act and Rules; had been stocked by a licenced stockist viz; M/s Simran Pharma, owned by co-accused, at licenced premises.

(iii) Phensedyl Cough Syrup is a therapeutic drug containing 'codeine' within specified limits, as provided under licence of the licenced manufacturer, under Drugs and Cosmetics Act.

(iv) Phensedyl Cough Syrup, as recovered, is covered under exception provided under entry No. 35 of Central Government Notification dated 14.11.1985 issued under section 2(xi)(b) of the N.D.P.S. Act and, therefore, cannot be construed as a Narcotic Drug or Manufactured Drug, hence, section 8 of the N.D.P.S. Act would not be attracted.

(v) The Directorate General of Health Services has issued clarification dated 26.10.2005 to specify that Phensedyl is a Schedule 'H' drug under the D & C Act and Rules and although

it contains 'codeine' in limited prescribed quantity, would not fall under the provisions of N.D.P.S. Act and Rules.

(vi) Considering the Narcotic contents and nature of Schedule 'H' drug, the manufacture and distribution of the drug has been regulated under the D & C Act and Rules. For that purpose the provisions require the manufacturer, stockist, distributor and seller etc. to obtain licence, which is issued on compliance of certain conditions. If it is ensured that these conditions are adhered and complied with and the Schedule 'H' drug is sold only on prescription, there would be no misuse of the drug. The authorities therefore are required to ensure strict compliance of the conditions of licence so as to prevent its misuse.

In the case in hand, if at all, an offence has been committed, it would be under the D & C Act, committed by the stockist viz; the co-accused, for violation of the provisions of section 18-B punishable under section 28-A of the D & C Act and/or other provisions.

(vii) This Court is also persuaded in concluding as above by judgments rendered by the Punjab and Haryana High Court in *Amrik Singh v. State of Punjab*, [1996 Cr.L.J. 3329.] titled '*Rajeev Kumar v. State of Punjab*', [1998 Cr.L.J. 1460.] titled '*Deep Kumar v. State of Punjab*', [1997 Cr.L.J. 3104.] and judgment rendered by the Hon'ble Supreme Court of India in *Md. Sahab Uddin v. State of Assam*, decided on 5.10.2012 in Criminal Appeal No. 1602 of 2012, S.L.P.(Cri.) No. 5503 of 2012 read with judgment of Gauhati High Court in *Md. Sahab Uddin v. State of Assam* (Bail Application No. 885 and 886 of 2012, decided on 25.5.2012). Likewise the judgment rendered by the Hon'ble Supreme Court of India in *Rajesh Kumar Gupta's case* (supra) favours the legal proposition propounded on behalf of the petitioner.

(viii) This Court has also taken into account that N.D.P.S. Act and Drugs and Cosmetics Act, both are Central Legislations. N.D.P.S. Act specifically provides exceptions whereunder a 'narcotic drug' (codeine) can be used for medicinal/therapeutic purposes. Under the provisions of the Act, Central Notification dated 14.11.1985, whereunder prescribed quantity of codeine has been allowed to be included, per dosage unit, has been issued. Admittedly, Phensedyl Cough Syrup contains 'codeine' within the prescribed quantity. **Thus, in the considered opinion of this Court Phensedyl Cough Syrup falls within the exception provided under the N.D.P.S. Act and, therefore, its possession with licenced stockists would not invite the penalties under N.D.P.S. Act. Phensedyl Cough Syrup, in the facts and circumstances of this case is required to be considered as a drug under the Drugs and Cosmetics Act."**

(Emphasis supplied)

29. The aforesaid decision in *Ashok Kumar Vs. Union of India* has been relied upon and followed in the Judgment dated 30-03-2015 passed by a Division Bench of this Court in *Ram Dayal Mathur versus Union of India*, Misc. Bench No. 8953 of 2013.

30. The learned Counsel for the petitioner has also placed reliance on a judgment of a Single Bench of this Court dated 25.11.2021 in **Bail No.13555 of 2021, Ajay Bajpai Vs. State of U.P.** In that case, on a search was conducted, 1,540 bottles of 100 ML each of a cough syrup were seized from a Car and three persons were apprehended. One of the FIRs was registered against them under Sections 420, 274, 275, 467, 468, 471 IPC read with Section 18/27 of the Drugs and Cosmetics Act, 1940 and the second FIR was lodged as Case Crime No.361 of 2021, under Sections 8/21/22 of the NDPS Act. In the FIR, it was alleged that the goods were apprehended and the accused were arrested on the ground that the medicine was fake medicine and on consumption thereof, it can cause damage to the public health. In sum and substance, the main contention was that the medicine being carried out were fake medicine. On the wrapper of the medicine seized, it was mentioned "**Chlorpheniramine Maleak and Codeine Phosphate Syrup (max coff)**". The apprehension was made out and recorded in the FIR that excess consumption of Codeine can cause intoxication. Based upon the said, a case was registered against the accused under Sections 8/21/22 of the NDPS Act. Dealing with the submission of the learned A.G.A. that the recovery was of commercial quantity, this Court held that "The said argument is fallacious and deserves to be rejected outrightly as the number of bottles seized were 1540 which contained 100 ml medicine in each bottle which were manufactured in terms of the license, **being termed as commercial quantity needs to be reprimand by this Court."**

After taking into consideration the fact that the test report confirming that drugs contained Codeine Phosphate, the Court held that: -

"8. From the perusal of the FIR as well as the medical report, which are on record, this Court has no hesitation in holding that the search and seizure is clear misuse of the powers conferred upon the authorities. In the light of the specific bar of Section 58 of the NDPS Act coupled with the fact that the NDPS Act is a stringent statute providing for very stringent penal consequences and is to be interpreted strictly as also held by the Hon'ble Supreme Court in the case of Toofan Singh vs. The State of Tamil Nadu; (2021) 4 SCC 1."

After taking into consideration all the relevant provisions contained in the NDPS Act, the Court held that: -

"15. Clearly the product seized did not fall within any of the things specified as narcotic drugs under Section 2(xiv) or a narcotic substance as defined under Section 2(xxiii). Despite the seized quote being medicine, in the seizure memo, no satisfaction forming a reasonable belief was recorded prior to causing the seizure which is a sine-qua-non for exercise of powers of seizure under Section 42(c) of the Act.

16. The only thing record in the seizure memo is that excess consumption of codeine can cause intoxication. The said certainly does not qualify to be a "reasonable belief" which is required to be recorded prior to seizure in terms of the mandate of Section 42.

17. The present case is a clear case for proceedings against the officers making the seizure in terms of the mandate of Section 58(1)(b) and (c) of the NDPS Act."

After recording the aforesaid finding, this Court issued a direction to register a case against the seizing party under the provisions of Section 58(1)(b) of the NDPS Act and to proceed in accordance with law.

31. In **State of Punjab v. Rakesh Kumar²**, it was not in dispute that the respondent-accused were found in bulk possession of manufactured drugs without any valid authorisation and they had already been convicted by the Trial Court for offences under Sections 21 and 22 of the NDPS Act. The High Court had passed an order suspending the sentence during pendency of an Appeal filed against conviction. In this factual backdrop, the Hon'ble Supreme Court proceeded to hold as follows:

"11. In the present appeals before us, the trial courts after analysing the evidence placed before them, held the respondent-accused guilty beyond reasonable doubt and convicted them for offences committed under Sections 21 and 22 of the NDPS Act.

12. The counsel for the respondent-accused have strongly supported the judgment of the High Court wherein it was held that, since the present matters deal with "manufactured drugs" the present respondents should be tried for the violation of the provisions of the Drugs and Cosmetics Act, 1940.

13. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the NDPS Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of the NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the NDPS Act are not in derogation of the Drugs and Cosmetics Act, 1940. This Court in *Union of India v. Sanjeev V. Deshpande³*, has held that : (SCC p. 16, para 35)

"35. ... essentially the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase, etc. of drugs generally *whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject*. Further, the provisions of the Act operate in addition to the provisions of the 1940 Act."

(emphasis supplied)

14. The aforesaid decision in *Sanjeev V. Deshpande case* further clarifies that, the NDPS Act, should not be read in exclusion to the Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the respondent-accused amounted to a prima facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.

15. In light of the above observations, we find that the decision rendered by the High Court holding that the respondent-accused must be tried under the Drugs and Cosmetics Act, 1940 instead of the NDPS Act, as they were found in possession of the "manufactured drugs", does not hold good in law. Further, in the present case, the respondent-accused had approached the High Court seeking suspension of sentence. However, in granting the aforesaid relief, the High Court erroneously made observations on the merits of the case while the appeals were still pending before it."

32. However, whether Phensedyl New Cough Linctus, or any substance containing "Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice." falls within the exception to item No. 35 of the Notification dated 14-11-1985 issued by the Government of India containing the list of narcotic drugs and whether it is a "Manufactured drug" and is a "narcotic substance" was neither raised nor adjudicated in this case.

33. A recent division judgment of this Court in **Hemant Kumar Saini versus Union of India 3**, this Court was dealing with a prayer to quash the F.I.Rs. Arising out of recovery of some other Codeine bases syrups and the Court declined to interfere at this stage on the following ground: -

"35. 'Codeine' is derivative of opium. What is the percentage/ratio of 'codeine' in the recovered and seized syrup, is not on record. The same has to be ascertained during the course of investigation/enquiry/laboratory report, as it has been shown in search memo that the samples of recovered syrup has been taken by Drug Inspector for investigation, hence in the context of seized syrups no conclusion can be drawn taking into account the said notification dated 14.11.1985, at this stage."

34. While examining the applicability of the aforesaid decisions, it would be appropriate to have a look at the law regarding application of precedents, as explained by the Hon'ble Supreme Court in **Roger Shashoua v. Mukesh Sharma 4**, in the following words: -

"55.It is well settled in law that the ratio decidendi of each case has to be correctly understood. In *Regional Manager v. Pawan Kumar Dubey*, a three-Judge Bench ruled: (SCC p. 338, para 7)

"7. ... It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. **One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.**"

56. In *Director of Settlements v. M.R. Apparao*, another three-Judge Bench, dealing with the concept whether a decision is "declared law", observed: (SCC p. 650, para 7)

"7. ... But **what is binding is the ratio of the decision and not any finding of facts.** It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. ..."

57. In this context, a passage from *CIT v. Sun Engg. Works (P) Ltd.* would be absolutely apt: (SCC pp. 385-86, para 39)

"39. ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. **A decision of this Court takes its colour from the questions involved in the case in which it is**

rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. ..."

58. In this context, we recapitulate what the Court had said in *Ambica Quarry Works v. State of Gujarat*: (SCC p. 221, para 18)

"18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in *Quinn v. Leatham*43.) ..."

59. From the aforesaid authorities, it is quite vivid that a ratio of a judgment has the precedential value and it is obligatory on the part of the court to cogitate on the judgment regard being had to the facts exposted therein and the context in which the questions had arisen and the law has been declared. It is also necessary to read the judgment in entirety and if any principle has been laid down, it has to be considered keeping in view the questions that arose for consideration in the case. One is not expected to pick up a word or a sentence from a judgment de hors from the context and understand the ratio decidendi which has the precedential value. That apart, **the court before whom an authority is cited is required to consider what has been decided therein but not what can be deduced by following a syllogistic process."**

35. In both the aforesaid decisions in **State of Punjab v. Rakesh Kumar and Hemant Kumar Saini versus Union of India** (Supra), the question whether or not the offending substances fell within the definitions of "manufactures drugs" and "narcotic substance" provided in Sections 2 (xi) and 2 (xiv) of the NDPS Act, was not decided. However, in the present case, the composition of the drug has been pleaded specifically and the same has not been disputed by the respondents. It is thus admitted that Phensedyl New Cough Linctus contains Codeine compounded with one other ingredient, namely Chlorpheniramine Maleate and contains merely 10 milligrams per dosage unit of 5 ml, which is not more than 100 milligrams of the drug per dosage unit in undivided preparations and the concentration of Codeine in Phensedyl New Cough Linctus is merely 0.2%, which obviously is not more than 2.5%. and the precise question involved in the case is on the basis of the aforesaid undisputed facts, whether Phensedyl New Cough Linctus falls within the exception mentioned in entry 35 of the Notification dated 14-11-1985 or not and consequently, whether the provisions of the NDPS Act would apply to it or not. Therefore, both the aforesaid judgments are not relevant for deciding the question involved in the present Writ Petition.

36. In **Hemant Kumar Saini (Supra)**, this Court has found force in the argument that the case of State of Uttaranchal Vs. Rajesh Kumar Gupta⁵, which has been relied upon by this Court in the case of Ashok Kumar Vs. Union of India (supra), has been over ruled by the Hon'ble Supreme Court in the case of Union of India Vs. Sanjeev V. Despande (supra) and the Court while deciding the case of Ashok Kumar Vs. Union of India (Supra), decided on 15.10.2014, has not discussed the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Sanjeev V. Despande (supra), which was decided earlier, i.e. on 12.08.2014. Therefore, the case of Ashok Kumar Vs. Union of India (supra) lost its binding effect in light of the law laid down by Hon'ble Apex Court in Union of India Vs. Sanjeev V. Despande (supra). With due respect to the aforesaid Bench of a coordinate Bench of this Court, we may state that even if we do not take into consideration the decision in Ashok Kumar versus Union of India, a bare reading of the provisions contained in Sections 2 (xi), 2 (iv) of the Act and Entry 35 of the Notification dated 14-11-1985 issued by the Central Government coupled with the undisputed composition of Phensedyl New Cough Linctus is sufficient to hold that the drug is not a Narcotic Drug and the binding effect of the decision of the decision in Ashok Kumar will not make any difference on the same.

37. Sri Ashish Pandey, learned Special Public Prosecutor for the NCB has lastly submitted that for falling within the exception carved out in entry 35 of the Notification dated 14-11-1985, the drug in question must fulfil two conditions - (1) Methyl morphine (commonly known as "Codeine") and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are

compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and (2) **it should have been established in Therapeutic practice.**" He submits that although there is no dispute that the drug in question fulfils the condition no. 1, it does not fulfil the condition no. 2, namely having been established in therapeutic practice. According to him, the drug in question is being illegally diverted for non-therapeutic uses, and, therefore, it does not fall within the exception to item No. 35 of the Notification dated 14-11-1985 issued by the Government of India and it would be subject to the provisions of the NDPS Act.

38. The expression "established in therapeutic practice" has not been interpreted in any previous decision. It is a basic rule of interpretation that the words used in the statute should be given their simple and natural meaning and neither any word should be added nor should any word be ignored while interpreting any provision. When the Government has used the expression "established in therapeutic practice" these words cannot be altered so as to read it as "used for therapeutic purposes". The phrase "established in therapeutic practice" apparently means that the compound in question has been established to be a drug in accordance with the therapeutic practices followed for establishment of new drugs. Therefore, the submission of Sri. Ashish Pandey that the drug in question does not fulfil the condition no. (2) of having been "established in therapeutic practice", is without any force.

39. Moreover, use or misuse of a drug by the end user or consumer of the same would not have any effect on the law governing the drug. Phensedyl is a drug covered by the exception contained in Article 35 of the Notification dated 14-11-1985 issued by the Central Government and it is not a narcotic drug and hence not covered by the provisions of the NDPS Act and merely because some persons may be misusing it for other than therapeutic purposes, it would not come within the purview of the NDPS Act. NDPS Act has been enacted with a specific object and the Authorities under the Act can exercise jurisdiction strictly in accordance with the provisions of the Act. The Authorities under the Act do not have sweeping powers to take action upon suspicion of any illegality or irregularity of any sort committed at any place in respect of any substance. It is settled law that penal statutes have to be interpreted in a strict manner.

40. Section 42 of the Act empowers the Authority to enter any building, conduct search and seizure **"if he has reason to believe from personal 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"** and in absence of any material having been placed on record to substantiate that the Authority had such reason to believe that Phensedyl New Cough Linctus is a narcotic substance, the Authority had no jurisdiction to initiate action by conducting the search and seizure of the drug on 17-01-2021 and all the consequent action is also without any jurisdiction and is unsustainable in law.

41. In view of the foregoing discussion, we hold that in view of the fact that as per the composition of Phensedyl New Cough Linctus pleaded in the Writ Petitions, the prescription dosage of Phensedyl Cough Syrup is 5 ml and each dosage unit thereof contains 10 mg of Codeine Phosphate IP, besides Chlorpheniramine Maleate I.P., Phensedyl New Cough Linctus contains merely 0.2 % Codeine, and this has not been disputed and rather has been admitted by the learned Counsel for the Respondent NCB that there is no dispute that the drug in question fulfils the first condition for falling within the exception to Entry 35 of the Notification dated 14-11-1985 issued by the Central Government containing the list of Narcotic Drugs, i.e. being "compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations", Phensedyl New Cough Linctus is not a Narcotic Drug and any dealing in this drug would not be subject to the provisions of the NDPS Act. The search and seizure conducted by the NCB Officials in Jaunpur on 17-01-2021 was without any authority of law and so is the complaint filed on 15-07-2021 by the Intelligence Officer, NCB under Sections 8, 21 (c), 22, 25, 29 and 60 (3) of the NDPS Act in the Court of Special Judge, NDPS Act at Jaunpur.

41. Accordingly, both the Writ Petitions are **allowed**. The proceedings of the aforesaid complaint in Case No. NCB/LZU/CR No. 04 of 2021 under Sections 8, 21 (c), 22, 25, 29 and 60 (3) of the NDPS Act pending in the Court of Special Judge, NDPS Act, Jaunpur and the investigation against the petitioners in relation to the aforesaid complaint are quashed.