

Deepak Rastogi vs The State on 12 February, 2025

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P. 132/2016, CRL.M.A. 2730/2016
DEEPAK RASTOGI

Through:

versus

THE STATE

Through:

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 12.02.2025

1. The instant revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter "Code") [now under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the petitioner/revisionist seeking the following reliefs:

"a) Call for the records of case FIR No. 5/2012, under section 9A / 22/ 25A/29 of NDPS Act and section 468 / 471/34 of IPC Act, PS: Special Cell, from the Court of Sh. Deepak Garg, Special Judge NDPS, Patiala House Court, New Delhi in Sessions Case No. 7/2012 titled as "State Vs. Deepak Rastogi & Ors.;

b) Set aside the impugned order on charge dated 30th September, 2015 passed by Sh. Deepak Garg, Special Judge NDPS, Patiala House Court, New Delhi in Sessions Case No. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 21:15:44 7/2012 titled as "State Vs. Deepak Rastogi & Ors.;

c) Pass such further order (s) and / or direction (s) as this Hon'ble Court may deem fit and proper in

the facts and circumstances of the case and in the interest of justice."

2. The brief facts of the case are that the petitioner namely Mr. Deepak Rastogi, who claims to be providing cargo related services as a living.

3. As per the prosecution, on 17th February, 2022, at about 3:00 PM, a secret information was received by Inspector Sanjay Dutt that the petitioner has received a huge consignment of ephedrine/pseudoephedrine and alongwith co-accused Mr. Gurbachan Singh @ Bobby, the same has been stored at Sector-7, R.K. Puram, Delhi.

4. At about 6:00 PM, the petitioner would come onto the Outer Ring Road, Malai Mandir, R.K. Puram to hand over another consignment to his associate Mr. Gurbachan Singh, who would come with the earlier consignment in one Indigo Car bearing no. DL-1CM-5783 for allegedly sending the same to North-Eastern States.

5. Pursuant to the receipt of the said information, both the petitioner and co-accused were apprehended by the police from the said spot and recovered Actifin tablets and 150 kgs of some loose white tablets from their possession.

6. Accordingly, an FIR bearing no. 5/2012 was registered at Police Station - Special Cell, Delhi under Sections 9A/22/25A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS") and Section 120B of the Indian Penal Code, 1860 (hereinafter "IPC").

7. In his disclosure statement, the petitioner disclosed that he obtained the Actifin tablets from Sandeep Medi Stores, Bhagirath Place, through one This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 21:15:44 Mr. Henry. Thereafter, chargesheet was filed against the petitioner and co-accused Mr. Gurbachan Singh on 18th April, 2012.

8. The recovered consignment was sent to the FSL and in its report, it was observed that the white tablets contain phenylpropanolamine hydrochloride, which is not covered within the ambit of NDPS Act, however, regarding the Actifin tablets, it was found that the same contains pseudoephedrine hydrochloride, which is a controlled substance and violative of Section 9A of the NDPS Act.

9. On 20th May, 2013, Mr. Henry was arrested by the investigating authority and a supplementary chargesheet dated 27th June, 2013 was filed against him for conspiring with the petitioner and Mr. Bobby for acquiring and dealing with Actifin tablets. In the said supplementary chargesheet, apart from one Mr. Henry, three other persons have also been arrayed as accused namely Mr. Sandeep Gupta, Mr. Vinit Kumar Garg and Mr. Anuj Khurana.

10. Accordingly, the learned Special Judge, NDPS, New Delhi (hereinafter "Special Judge") passed an order dated 30th September, 2015 (hereinafter "impugned order"), thereby, framing charges

against the petitioner herein under Sections 25A/29 of NDPS Act.

11. Aggrieved by the same, the petitioner has filed the instant petition seeking setting aside of the impugned order.

12. Learned counsel appearing on behalf of the petitioner submitted that the learned Special Judge erred in passing the impugned order as the same was passed without due consideration of material available on record.

13. It is further submitted that the learned Special Judge failed to appreciate the distinction between the narcotics, psychotropic substances This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 21:15:45 and control substances, wherein, the latter is controlled by the Government of India. In light of the same, it is submitted that the Actifin tablets consist of one pseudoephedrine hydrochloride, which is one of the many substances used in the said Actifin tablet. Therefore, Actifin tablet being a mixture or prepared drug, does not violate the provisions of the NDPS Act.

14. It is submitted that the learned ASJ failed to consider the relevant provisions of the NDPS Act as well as the Notification S.O.1296(E). dated 28th December, 1999 and Table 14 of the Gazette of India published on 26th March, 2013, therefore, the Actifin tablets do not fall within the ambit of NDPS Act.

15. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

16. Per Contra, learned ASC appearing on behalf of the State vehemently opposed the instant petition and submitted that the learned Special Judge has rightly considered the material placed on the record, subject to the satisfaction of the Court that a prima facie exists against the petitioner.

17. It is further submitted that it is a settled position of law that the Court concerned is not required to evaluate the material in entirety and consider the defense of the accused at the stage of framing of charges.

18. It is submitted that this Court has limited powers to interfere with the impugned order while exercising revisional jurisdiction and the said interference can be done only if there is a glaring irregularity in the order passed by the Subordinate Court. In the instant case, the learned Special Judge has rightly relied on the sufficient material on record for framing of charges against the petitioner.

19. It is submitted that the impugned order passed by the learned ASJ This is a digitally signed order.

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20. In view of the aforementioned submissions, it is prayed that the instant petition, being devoid of any merit, may be dismissed.

21. Heard learned counsel for the parties and perused the record.

22. It is a settled position of law that the revisional jurisdiction conferred upon this Court is limited in nature and therefore, the same cannot be exercised in a mechanical manner. However, the said revisional jurisdiction can be exercised when there is a gross illegality or irregularity in the findings given by the court below. The said principle was encapsulated by the Hon'ble Supreme Court in the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, wherein, it was categorically observed that the revisional jurisdiction can be invoked only when the Subordinate Court has passed an order which is grossly erroneous and ignored the pertinent evidence on record, however, the same is not exhaustive in nature and differs with every case based on the merits of the same.

23. Therefore, keeping the foregoing in mind, the limited question for adjudication before this Court is whether the learned ASJ right in framing charges against the petitioner herein based on the material available on record.

24. At this juncture, this Court deems it necessary to examine the findings of the impugned order and the relevant portion of the same is as follows -

"12. The record reveals that the aforementioned disclosures of the accused persons stand corroborated by the statement tendered by M.G. Goel (the Director of the manufacturer of Actifin tablets), the statement given by Keval Das (the owner of transport company who had delivered the consignment of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 21:15:45 Actifin tablets on 17.02.2012 to the representative of Banti Pharma), the documentary evidence in the form of invoices seized during investigation and the call detail records of Sandeep Gupta, Vinit Garg and Henry. Admittedly, as per record, the invoice showing the sale of Actifin tablets from Banti Pharma to Pharmex Distributors, the authority letter issued by Vinit Kumar Garg to Sandeep Gupta to collect the consignment in Delhi were deposited with FSL for comparison of its writing and signature with the signature of Vinit Kumar Garg and the FSL report filed shows that the same are infact in the handwriting of Vinit Garg. The call detail records of mobiles of accused Sandeep Gupta and Henry filed show that they were in continuous touch with each other. The call detail records of mobile

of accused Sandeep also show that he was in touch with M.G. Goel, the Director of Manufacturer of Actifin tablets, Keval Dass, owner of the transport company and with Vinit.

13. In view of the above, there is prima facie material on record to suggest that all the accused persons conspired with each other for illegal trafficking of Actifin tablets containing pseudoephedrine hydrochloride, a controlled substance in contravention of the orders passed by central government u/s 9A of NDPS Act and the recovery of the substance on 17.02.2012 was in pursuance of the same. There is further material to show that in order to procure the said substance and to complete the chain of showing false supply/sale of said tablets, accused Sandeep Gupta, Vinit Kumar and Anuj Khurana also created forged documents and fraudulently or dishonestly used the same as genuine knowing or having reason to believe the said documents to be forged.

14. Hence there is prima facie ground to proceed against all the accused persons u/s 29 NDPS Act and u/s 25A r/w section 29 NDPS Act. Further there is prima facie ground to proceed against accused Sandeep Gupta, Vinit Kumar and Anuj Khurana additionally u/s 468/471/34 IPG as well. "

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25. Upon perusal of the foregoing extracts of the impugned order, it is observed that the learned Special Judge has relied upon the material i.e., documentary evidence such as the FSL report, call record details etc. and accordingly, arrived at a conclusion that there exists a prima facie case against the petitioner among others for the offences punishable under Sections 25A/29 of NDPS Act.

26. Before advertng to the instant case, it is apposite for this Court to mention the case of State of T.N. v. R. Soundirarasu, (2023) 6 SCC 768, wherein, it is precisely observed by the Hon'ble Supreme Court that at the stage of framing of charges, the Courts are only required to evaluate the material on record to solely determine whether a prima facie case is made out against the accused or not.

27. Furthermore, in the case of Tarun Jit Tejpal v. State of Goa, (2020) 17 SCC 556, the Hon'ble Supreme Court also observed that the submissions made on the merits of the case should be taken at an appropriate stage, including the defence of the accused, as the same is not required at the stage of framing of charges.

28. It is the contention of the petitioner that the Actifin tablet cannot be considered as a controlled substance as the same is used for medicinal purposes and that pseudoephedrine hydrochloride is only one of the many elements used therein, therefore, the same does not fall within the ambit of

NDPS Act.

29. At this juncture, it is pertinent to understand the definition of 'controlled substance' and 'preparation' given under the NDPS Act. Sections 2(viid) and 2(xx) of the same is as follows -

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"2...

[(viid)] "controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;] *** (xx) "preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;"

30. Upon reading of the aforesaid provision, it is observed that the controlled substances are regulated by the Government of India vide issuance of necessary notifications in the Official Gazette. Therefore, it is pertinent to reproduce the contents of the Gazette Notification S.O. 1296(E) dated 28th December, 1999 and Gazette Notification S.O. 834(E) dated 26th March, 2013, which are as follows -

"Ministry of Finance, Department of Revenue, Notification S.O.1296(E), dated 28th December, 1999* S.O.1296(E) - Whereas, the Central Government, having regard to the available information about the use of ephedrine and pseudoephedrine in the manufacture of certain amphetamines and methamphetamine decided to declare the same as controlled substances;

2. Now, therefore, the Central Government in exercise of the powers conferred under clause (viiia) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), hereby declares Ephedrine and Pseudoephedrine and their salts as controlled substances for the purpose of the said clause."

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31. The foregoing notification reveals that the preparation of pseudoephedrine is also considered as controlled substance. At this stage, it is also pertinent to mention that the FSL report stated that the Actifin tablet consists of pseudoephedrine hydrochloride, which is a controlled substance.

32. Considering the foregoing material, it is observed that the Actifin tablet consists of a controlled substance namely pseudoephedrine hydrochloride and the same falls within the ambit of NDPS Act as provisions pertaining to the controlled substances are governed by the said statute.

33. Therefore, taking into consideration the foregoing discussion, it is held that the learned Special Judge was right in framing charges against the petitioner as there is sufficient evidence on record which indicates that the This is a digitally signed order.

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34. Given the limited jurisdiction of this Court while exercising revisional powers, this Court finds no reason to interfere with the impugned order at this stage of framing of charge as prima facie case is made out against the petitioner under Sections 25A/29 of NDPS Act.

35. Therefore, this Court is of the considered view that there is no illegality in the impugned order dated 30th September, 2015 passed by the learned Special Judge, NDPS, New Delhi , arising out of FIR bearing no. 5/2012 and the same is, hereby, upheld.

36. Accordingly, the instant revision petition is dismissed being devoid of any merit, along with pending applications, if any.

37. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The Court concerned shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

CHANDRA DHARI SINGH, J FEBRUARY 12, 2025 Rt/mk/ryp Click here to check corrigendum, if any This is a digitally signed order.

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