

Sandeep Gupta 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. 70/2016, CRL.M.A. 1441/2016
SANDEEP GUPTA

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 the case titled as state Vs. Deepak Rastogi & Ors., FIR No.5/2012, U/s. 9(a), 22, 25(A) and 29 NDPS Act, PS Special Cell pending in the court of Sh. Deepak Garg, Spl. Judge, NDPS Court, New Delhi now pending for 08.02.2016 to examine the correctness, legality and propriety of order dated 30.09.2015 and formal charge dated 30.09.2015 and after examining set aside the same.

b) Pass any other or further order as this Hon'ble Court may deem fit and proper, in the interest of justice."

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2. The brief facts of the case are that the petitioner namely Mr. Sandeep Gupta runs a store i.e., M/s Sandeep Medi Sales, which is located at 1520/7, Ground Floor, Bhagirath Place, Delhi.

3. As per the prosecution, on 17th February, 2022, at about 3:00 PM, a secret information was received by Inspector Sanjay Dutt that one accused namely Mr. Deepak Rastogi 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 accused Mr. Deepak 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 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 accused Mr. Deepak disclosed that he obtained the Actifin tablets from the petitioner's medical store through one Mr. Henry. Thereafter, chargesheet was filed against the said two accused - Mr. Deepak and Mr. Gurbachan Singh on 18th April, 2012.

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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 accused Mr. Deepak 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 (petitioner herein), Mr. Vinit Kumar Garg and Mr. Anuj Khurana.

10. In the said supplementary chargesheet, it was stated that the petitioner was instrumental in collecting the consignment of Actifin tablets from Biogenetic Drugs Private Limited and in preparing false documents to complete the chain of false supply of Actifin tablets, thereby, making them

available to the other co-accused.

11. Accordingly, the learned Special Judge, NDPS, New Delhi (hereinafter "Special Judge") passed an order dated 30 th September, 2015 (hereinafter "impugned order"), thereby, framing charges against the petitioner herein under Sections 25A/29 of NDPS Act and Sections 468/471/34 of the IPC.

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

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13. 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.

14. It is submitted that the learned Special Judge incorrectly framed charges against the petitioner as he was wrongly implicated in the instant case and that he has a valid license for the sale of medicines. It is further submitted that the petitioner was not named in the original chargesheet and was only arrayed as an accused in the supplementary chargesheet, which reveals that there was no material found against the petitioner initially and was wrongly implicated in the instant case.

15. It is further submitted that the learned Special Judge failed to appreciate the distinction between the narcotics, psychotropic substances 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.

16. 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 26 th March, 2013, therefore, the Actifin tablets do not fall within the ambit of NDPS Act.

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

18. Per Contra, learned ASC appearing on behalf of the State vehemently opposed the instant petition and submitted that the learned Special Judge has This is a digitally signed order.

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19. 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.

20. 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.

21. It is submitted that the impugned order passed by the learned ASJ does not suffer from any irregularities or illegality, therefore, the interference of this Court under revisional jurisdiction is not required.

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

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

24. 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 This is a digitally signed order.

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25. 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.

26. 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 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 This is a digitally signed order.

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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. "

27. 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, invoices, bills, call record details etc. and statements made by Mr. M.G. Goel (Director of manufacturer of Actifin tablets) and Mr. Keval Das (owner of transport company which was involved in delivering the said consignment) 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 and Sections 468/471/34 of the IPC.

"Before adverting 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."

28. Furthermore, in the case of Tarun Jit Tejpal v. State of Goa, (2020) This is a digitally signed order.

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29. Adverting to the instant case, it is the contention of the petitioner that the petitioner is falsely implicated in the instant case as he was not involved in procurement of the consignment and making of false documents pertaining to the sale of Actifin tablets.

30. However, it is also the case of the respondent that the role assigned to the petitioner is to receive the consignment of Actifil tablets which allegedly contain a controlled substance, thereby, playing an instrumental role. Furthermore, it is contended that the petitioner played a significant role by making fake invoices for the sale of Actifin tablets i.e., from Biogenetic Drugs Private Limited to M/s Banti Pharma.

31. At this juncture, this Court deems it apposite to peruse the letter sent by the co-accused Mr. Vinit Kumar Garg, proprietor of M/s Banti Pharma to Choudhary Golden Transport Company, through which the consignment was shipped, wherein, it was stated that there was a delay in receiving the said consignment of Actifil tablets sent via the said travel company and a vehicle will be sent from Aligarh to Delhi to collect the same.

32. The said contents of the letter are further supported by the statement of Mr. Kewal Das, owner of Choudhary Golden Transport Company given under Section 161 of the Code. Further, it was stated that communication regarding the same was given from a mobile number 9873669330. In the statement of Mr. Vinit Pahwa, under Section 161 of the Code, who owns a mobile store, it was mentioned that the petitioner herein took a SIM Card This is a digitally signed order.

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33. Given the foregoing discussions, the material on record indicates that the petitioner is involved in the said case of procurement and sale of Actifil tablets.

34. Furthermore, 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.

35. 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 -

"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;"

36. 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 26 th This is a digitally signed order.

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"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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37. 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.

38. 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. Furthermore, upon perusal of the Lower Court Record, it is observed that there are various invoices, wherein Actifin tablets were being sold to one Pharmix Distributors by M/s Banti Pharma.

39. As observed earlier, it appears prima facie that the petitioner is involved in the procurement of the consignment as well as making fake documents for the sale of Actifin tablets, thereby, indicating his instrumental role in the syndicate.

40. 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 the involvement of petitioner in dealing with the consignment of the Actifin tablets and creating fake documents for the sale of the said tablets. Moreover, the veracity and truthfulness of whether any provisions of the NDPS are violated by the petitioner must be dealt at the further stages of trial and the same cannot be dealt at the stage of framing of charge.

41. 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 This is a digitally signed order.

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42. 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.

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

44. 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 mk/ryp Click here to check corrigendum, if any
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