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IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE  
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 24<sup>th</sup> OF APRIL, 2023

MISC. CRIMINAL CASE No. 9824 of 2023

**BETWEEN:-**

ANITA GUPTA W/O SHRI GOPAL GUPTA, AGED ABOUT  
51 YEARS, OCCUPATION: HOUSEWIFE RESIDENT OF 21,  
RAVI NAGAR PHOOLBAG LASHKAR, DISTRICT  
GWALIOR (MADHYA PRADESH)

.....PETITIONER

(SHRI SANKALP SHARMA, LEARNED COUNSEL FOR THE PETITIONER)

**AND**

CENTRAL NARCOTICS BUREAU, GWALIOR DISTRICT  
GWALIOR (MADHYA PRADESH)

.....RESPONDENT

(SHRI PRAVEEN NEWASKAR, LEARNED DEPUTY ASSISTANT SOLICITOR  
GENERAL FOR THE RESPONDENT- CENTRAL NARCOTICS BUREAU,  
GWALIOR)

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*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

By this petition under Section 482 of CrPC, petitioner seeking  
quashment of FIR at Crime No.02 of 2017 registered by Police Station Central  
Bureau Narcotics, Gwalior for offence punishable under Sections 8/21, 28/29 of  
Narcotics Drugs and Psychotropic Substances Act (hereinafter it referred to as  
"the NDPS Act ") and all other consequential proceedings flowing out of said  
crime.

(2) Facts giving rise to present petition in short are that petitioner is the  
wife of Shri Gopal Gupta and Shri Gopal Gupta is having a medical shop in the

name of his wife and on giving information from an informer, on 06-08-2016, Central Narcotics Bureau, Gwalior reached the Pharama Agency, Gwalior where one Raju alias Rajendra Bandil who is recognized himself as a Manager of Pharma Agency told that the Pharma agency does not have distributorship of phensedyl cough syrups and at the time of search, he told that he has purchased 150 boxes of phensedyl cough syrups from the petitioner belonging to M/s. Abhay Traders Delhi, Tara Medical Agency, Kolkata, Galav Pharmaceuticals Ltd., Gwalior, KDM Enterprises, Gwalior global marketing Gwalior and Pharma Sales Gwalior which is the local -made cough syrups and thereafter on 19-01-2017 respondent reached the house of petitioner and found locking her warehouse and on asking, the husband of petitioner Shri Gopal Gupta told that key has already been lost and thereafter, lock of warehouse was broken and 762 cartoons near about 100 bottles total 76,2000 bottles were found in warehouse kept in jute bags containing phensedyl cough syrups. On enquiry, he husband of petitioner did not show or produce any valid licence or document in order to prove possession of said syrups. Thereafter, the statements were recorded under Section 67 of NDPS Act. A private complaint was filed by respondent under Sections 8/21, 28/29 of the NDPS Act against the petitioner by which the impugned FIR has been registered.

(3) It is contended by learned counsel for petitioner that phensedyl does not fall within the category of NDPS Act as per the notification dated 14-11-1985, No.SO 826(E) and as per letter dated 26th October, 2005 issued by the Drug Controller Central, if percentage as provided under Drug and Cosmetic Act is not breached, then the drugs would not fall under purview of NDPS Act. It is further contended that petitioner is the Proprietor of authorized wholesaler

having a drugs licence and having authorized for transaction of drugs and performing its trade. The petitioner is having a licence who holds licence as well as holds legal possession of drugs, therefore, no offence is made out under NDPS Act as contents of Phensedyl have been described or prepared by Company M/s.Abhott Pharmaceuticals Limited as per the notification of Union of India dated 14-11-1985. Therefore, scope of authority- respondent does not fall with the scope of either investigation, search or seizure. In this regard, the counsel for the petitioner has relied on the judgment of **Ashok Kumar Thakur vs. Union of India, MANU/UP/1913/2014** wherein Hon'ble Apex Court on perusal of provisions of Section 42 came to a conclusion that phensedyl cough syrup is outside the purview of NDPS Act and aforesaid aspect has been taken into consideration by this High Court in the matter of **Arvind Chandwani vs.State of MP, MCRC 19922 of 2022** wherein, it has been held that the composition of cough syrup is well within the limit prescribed by Union of India and the same is not covered under the scope of NDPS Act. It is further contended that if the unit of drug does not fall in the category of Narcotic Drugs, then bulk of itself cannot be part of Narcotic Drugs. The learned counsel for petitioner has drawn attention towards the judgment of Allahabad High Court in the matter of **Vibhor Rana vs. Union of India (Criminal Misc. Writ Petition No. 8403 of 2021 and 8370 of 2021 decided on 24-12-2021)** and contended that phensedyl cough syrup is not a narcotic drug and any dealing in this drug would not be subject to the provisions of NDPS Act. The search and seizure conducted by the respondent was without any authority of law and so is complaint filed under Sections 8/21, 28/29 of NDPS Act by respondent. Hence, prayed for quashment of impugned FIR as well as other consequential proceedings. It is further contended that respondent authority has acted illegally

and outside the jurisdiction as substance in question does not fall either within the ND or PS and in this regard, he has relied on the judgment of Hon'ble Apex Court in the matter of **State of Punjab and Rakesh Kumar, AIR 2019 SC 84** and submitted that the action of the authority is manifestly illegal and contrary to law. Hence, no case is made out against petitioner for commission of alleged offence. It is further contended that Hon'ble Apex Court has laid down the parameters for exercising the powers under Section 482 of CrPC in the matter of **State of Haryana And Ors vs Ch. Bhajan Lal and Ors, 1992 AIR 604** which reads as under:-

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

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

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as

contemplated under Section 155(2) of the Code;

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

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

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

(4) On relying the judgments of **Amrik Singh vs. State of Punjab 1996 CriLJ 3329**, **Ashok Kumar Vs. Union of India** decided on 15-10-2014 in CrA 2976 of 2014 as well as the judgments passed by this High Court in the case of **Arvind Chandwani vs. State of MP** decided on 28-04-2016 MCRC 19922 of 2015, **Shiv Kumar Gupta vs. State of MP** decided on 16-02-2015 in CRR 200 of 2015 and **Rajendra Bandil @ Raju Bandil vs. State of MP and Others**, decided on 27-04-2022 in MCRC 13546 of 2016, it is contended that since there is no violative of any provisions of NDPS Act, offence under NDPS Act for which petitioner- accused was in possession of alleged cough syrups is made out and she is liable to be discharged from the alleged offence.

(5) On the other hand, Counsel for the respondent submitted that there is specific allegation of illegal possession of phensedyl syrups and the premises from where the same were seized, at that time, petitioner was not having any valid licence under Drugs and Cosmetics Act. Petitioner was not able to produce any documentary evidence in this regard. Therefore, respondent-authority has rightly registered the impugned FIR on the basis of complaint against petitioner for commission of offence under Sections 8/21, 28/29 of NDPS Act. It is further contended that scope of Section 482 of CrPC is very limited and the same needs to be exercised very sparingly with great care and circumspection and at the time of searching, near about 762 cartoons (100 bottles of each cartoon) total 76,200 bottles were found in the warehouse in jute bags containing phensedyl cough syrups i.e. from possession of petitioner. It is further submitted that who was the actual licensee and owner at the relevant point of time, are the questions of fact and the same can be resolved in the trial only. Petitioner has to plead and prove innocence or truth by way of leading evidence and pleadings at the time of trial and this mixed questions of fact and law cannot be decided on the basis of mere pleadings at the time of trial and, therefore, no interference under Section 482 of CrPC for quashment of FIR as well as other consequential proceedings can be quashed at this stage. Hence, prayed for dismissal of this petition.

(6) After having heard learned counsel for the parties and on perusal of record as well as law laid down by the Hon'ble Supreme Court as well as High Courts, it would be appropriate to mention here that in exercise of powers, Central Government has issued a notification dated 14-11-1985 No.SO 826(E) which declares certain narcotic substances to be manufactured drugs and if

concentration of codeine in 100 milligrams of a drug does unit is more than 2.5% in undivided preparation, the same shall be exempted from category of narcotic drugs. The conjoint reading of aforesaid provision and notification clearly establishes that phensedyl does not fall in the category of NDPS Act. Accordingly, this Court does not defer from the view adopted earlier by this Court in the above cited cases. It is the obligation on the part of prosecution as to whether if any provision of Drugs and Cosmetics Act has been violated by petitioner or not and thereafter, take appropriate action in accordance with law. So far as provisions of Sections 8/21, 28/29 of NDPS Act is concerned, the impugned FIR at Crime No.02 of 2017 registered by Police Station Central Bureau Narcotics, Gwalior against petitioner for offence punishable under Sections 8/21, 28/29 of NDPS Act & all other proceedings flowing out of said crime is hereby **quashed**.

(7) In view of the above, this petition **stands allowed**.

MKB

(DEEPAK KUMAR AGARWAL)  
JUDGE