

NCB Vs. Ramdingngheta & Ors.

**IN THE COURT OF SH. SUDESH KUMAR II : SPECIAL JUDGE NDPS:
PATIALA HOUSE COURTS: NEW DELHI**

SC No. 8500/16

ID No. 02403R0006492013

Narcotics Control Bureau

Through: Shri C.S. Rai,

Intelligence Officer,

Narcotics Control Bureau, New Delhi

Versus

- 1. Ramdingngheta (already convicted)**
S/o Sh. T. Ramchhangthanga
R/o WZ-17, Asalat Pur, Janakpuri,
New Delhi
- 2. David Lalnutlunanga**
S/o Sh. T. Thangzuala
R/o 120, Paat of Ramhlum North,
Aizwal
- 3. Lalparmawia**
S/o Valalnghaka
R/o Arzawlkhata
Aizwal
- 4. Ramdim (Proclaimed Offender)**
S/o Cung UK
R/o A-32, Chanakya Place,
New Delhi
Also at: Village Farkawn, Distt. Champhai,
Mizoram

Date of Institution : 18.01.2013

Judgment reserved on : 29.05.2018

Date of pronouncement : 31.05.2018

JUDGMENT

1. The Narcotics Control Bureau (herein after referred to as NCB) through its Intelligence officer (IO) Sh. C.S. Rai has filed the present complaint against the aforementioned accused persons u/s 9A, 25A and 29 of the Narcotic Drugs and Psychotropic Substances Act (herein after referred to as NDPS Act).
2. Briefly stated the allegations against the accused persons as asserted in the complaint are as follows:
 - (a) On 21.11.2012 at about 0415 hours Sh. Rajesh Kumar, Intelligence Officer, received an information that four accused persons namely Ramdingngheta, David Lalnutlunanga, Ramdim and Lalparmawia are going to Kolkata from terminal 1D, IGI Airport by flight No. G8-101 of Go Airline and are suspected to carry huge quantity of pseudoephedrine in the form of tablets.
 - (b) The information was reduced into writing and was passed on to IO C.S. Rai and was put up before Sh. R.K. Singh, Superintendent, NCB who issued a search authorization alongwith departmental seal of NARCOTICS CONTROL BUREAU DZU 4 in favour of the IO and also gave him directions to take necessary action. A raiding team under the supervision of Sh. R.K. Singh, Superintendent was constituted which left for the spot at about 0510 hours and reached there at 0530 hours.
 - (c) After reaching the said spot, IO C.S. Rai met with Sh. Kinjo Bhutia, the informer who stated that they had intercepted the abovesaid four persons. Thereafter, on the request of IO C.S. Rai, Mr. Gajraj Singh and Mr. Jignesh Kumar, officials of CISF agreed to become public witnesses.
 - (d) Thereafter, IO C.S. Rai introduced himself with the accused persons and disclosed the secret information to them. They were then apprised about

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their legal rights and were issued notices U/s 50 of NDPS Act and were made to understand that they have a legal right to be searched before a Magistrate or a Gazetted Officer. The accused persons refused to exercise the said right and informed that any NCB officer could conduct their search.

(e) The NCB officials conducted search of all the accused persons but nothing incriminating was recovered. Thereafter the search of baggages of accused persons was conducted and 20.1 Kg, 23.7 Kg, 19.9 Kg and 21.3 Kg of pseudoephedrine tablets were recovered from the baggage of accused Lalparmawia, Ramdingngheta, Ramdim and David Lalnutlunanga respectively. Total 85 g of pseudoephedrine tablets were recovered from all the accused persons.

(f) Samples were drawn and sealed separately. Remaining substance alongwith the packing material were also sealed separately and all the parcels were taken into possession through panchnama.

(g) Summons u/s 67 NDPS Act were then issued to the accused persons and in pursuance of the same, they accompanied the NCB officials to their office and tendered their statement admitting their complicity in the present case. The accused persons were thereafter arrested and their personal search was conducted.

(h) Seizure report u/s 57 NDPS Act regarding arrest, search and seizure of contraband was submitted by the IOs to their immediate superior officer.

(i) Summons were also issued to the independent witnesses and in pursuance of the same, they appeared in the NCB office and tendered their voluntary statements. The case property along with samples and test memo was deposited with the Malkhana Incharge.

(j) During further investigation, the sample of recovered substance was sent to CRCL for analysis and after receiving the report of the Chemical Examiner that the sample has tested positive for pseudoephedrine, the present complaint was filed.

3. On the basis of the material on record, Ld. Predecessor, vide order dated 25.07.2013, framed charges against all the accused persons u/s 9A, 25A r.w.s. 29 of NDPS Act to which the accused persons pleaded not guilty and claimed trial.
4. The prosecution in order to prove its case against accused persons has examined 14 witnesses.
5. **PW5 Sh. Rajesh Kumar, PW6 Sh. Azad Singh and PW13 Sh. C.S. Rai** are members of the raiding team. They have deposed on similar lines and have reiterated more or less the assertions made in the complaint. As per their depositions, The secret information deposed to have been received by PW1 has been exhibited as Ex.PW1/A. The notices issued to the accused persons have been exhibited. The panchnama and test memo have been exhibited as ExPW5/B and Ex PW6/B respectively. PW5 Sh. Rajesh Kumar, IO has inter alia deposed he had recorded the statement of accused Ramdingngheta u/s 67 NDPS Act and thereafter arrested him. PW6 IO Azad Singh has stated that he had recorded the statement of accused Lalparmawia and put him under arrest vide memo Ex.PW6/D. PW13 IO C.S. Rai has stated that accused David Lalnutlunanga appeared before him and he had recorded the statement of this accused and put him under arrest vide memo Ex.PW13/B. Summons issued by the IO to the panch witness and who tendered his statement u/s 67 of NDPS Act has also been duly exhibited. The case property and the samples were also

duly produced before the court and were duly exhibited during the depositions of the aforementioned witness.

6. **PW1 Sh. R.K. Singh** has inter alia deposed that on the day of incident, he was posted as Superintendent, NCB DZU and on that day, IO Sh. Rajesh Kumar had put up before him secret information Ex.PW1/A and after going through the same, he had directed the IO to take necessary action and had issued seal of NARCOTIC CONTROL BUREAU DZU-4, to him. He had also issued search authorization in favour of IO C.S. Rai and the same has been exhibited as Ex.PW1/B. As per this witness, he had signed on the seal movement register Ex.PW1/C with respect to the handing over and return of the seals to and from the IO. He has then further deposed that IOs had put before him reports u/s 57 NDPS Act regarding seizure and arrest of accused persons. As per this witness, on 21.11.2012, he had forwarded the sample alongwith test memo to CRCL vide forwarding letter Ex.PW1/D. Letter MLO Champai, Mizoram for verification of the license of accused Ramdim and the verification report received therefrom have been exhibited as ExPW1/J and PW1/M respectively. The inquiry report in respect of addresses of accused persons has been exhibited as Ex.PW1/L.
7. **PW3 B.S. Bisht**, Asst. Chemical Examiner, CRCL deposed that he had received the sample in question at CRCL and had issued the receipt Ex.PW1/F. **PW4 Sh. V.K. Sharma**, Chemical Examiner, CRCL and **PW7 Sh. V.B. Bahuguna**, Assistant Chemical Examiner, CRCL have inter alia deposed that the sample in question deposited with the CRCL, were examined by PW7 Sh. V.B. Bahuguna under the supervision of PW4 Sh. V.K. Sharma and the said witnesses have proved the chemical analysis reports prepared by them in this

regard as Ex.PW4/A. As per their depositions, sample had tested positive for pseudoephedrine.

8. **PW2 Sh. S.K. Sharma** has inter alia deposed that on 21.11.2012 he was working as Intelligence Officer Malkhana Incharge in NCB, DZU, R.K. Puram and that in the present case, the entire case property were deposited with him in the Malkhana and he had made an entry to this effect in the Malkhana register. He has also deposed that samples were sent to CRCL and that the remnants sample along with test report was deposited back with him in the Malkhana. The relevant pages of the malkhana register containing the said entries has been exhibited as Ex.PW2/B. This witness has further deposed that accused Ramdin had appeared before him pursuant to notice u/s 67 NDPS Act and he had recorded his statement and put him under arrest vide memo Ex.PW2/D and conducted his jamatalashi vide memo Ex.PW2/E.
9. **PW10 Sepoy Vasudev Bharadwaj** has inter alia deposed that on 21.11.2012 on the directions of Superintendent R.K. Singh, he had carried the sample packets mark A1, B1, C1, D1 and E1 alongwith the forwarding letter and test memo in duplicate vide authorization letter Ex.PW1/D to the CRCL and had deposited the same in CRCL. Acknowledgment receipt has been exhibited as ExPW1/F.
10. **PW12 Driver Bau Lal** has deposed that on 21.11.2012 he had joined the raiding team as driver and took the raiding team to IGI Airport, terminal III in an Bolero car no. DL 12C 1168 and reached the spot at about 05.20 AM. However, he did not join the proceedings and remained present in the vehicle. According to this witness they left the spot along with accused persons at about 09.00 AM.
11. **PW10 Sepoy Vasudev Bharadwaj** has inter alia deposed that on 21.11.2012 on

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the directions of Superintendent R.K. Singh, he had carried the sample packets mark A1, B1, C1, D1 and E1 alongwith the forwarding letter and test memo in duplicate vide authorization letter Ex.PW1/D to the CRCL and had deposited the same in CRCL. Acknowledgment receipt has been exhibited as ExPW1/F.

12. **PW14 Dr. Rahul Soni**, PG Resident, Pathology Department, RNT Medical College, Udaipur, Rajasthan has deposed that on 22.11.2012 he was posted at Safdarjung Hospital as Junior Resident Doctor and on that day he had conducted the MLCs of accused persons and has exhibited the same as Ex.PW13/E, PW13/H, PW13/G and PW13/F.

13. All the incriminating evidence was put up to accused persons in their statements u/s 313 Cr.P.C. All of them denied the evidence coming up on record against them and stated that they have been falsely implicated.

14. I have heard arguments at length on behalf of Ld. SPP and all the Defence Counsels. The foremost contention which has been raised on behalf of the defence is that on the date of apprehension of accused persons, pseudoephedrine tablets, which are a preparation of pseudoephedrine were not at all declared to be a controlled substance and therefore the offence for which they have been charged in the present case is not covered under the provisions of NDPS Act at all. It has been asserted that the tablets allegedly recovered from the accused persons contained apart from pseudoephedrine hydrochloride, another constituents and that therefore the tablets recovered in the present case are to be held 'preparation of pseudoephedrine' which was not declared a controlled substance as on the date of alleged offence in the present case.

15. In regard to the aforesaid contention I find it relevant here to refer to the order

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dated 07.05.2014 passed by my Ld. Predecessor on the bail applications filed on behalf of the accused persons where in the Ld. Predecessor has observed as under:

To understand the submissions advanced by the Ld. Counsels, it will be necessary herein to take note of certain provisions of NDPS Act which make it clear that there is a distinction drawn between the narcotic drugs and psychotropic substances on the one hand and the controlled substances on the other hand. Section 2 of the NDPS Act which contains the definitions of various terms used in the NDPS Act inter alia gives the following definitions:

2(xiv) - "Narcotic Drug" means coca leaf, cannabis (hemp), opium poppy straw and includes all manufactured drugs.

2(xi) - "Manufactured Drugs" 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 decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug.*

*2(xxiii) - "Psychotropic substances" means any substance, natural or synthetic, or any natural material or any salt or **preparation** of such substance or material included in the list of psychotropic substances specified in the Schedule.*

2(vi) - "Controlled Substance" means any substance which the

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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.

The term 'preparation' is defined vide section 2(xx) as follows:

***"Preparation"**, in relation to the 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.*

*Further it is section 8 of the Act which inter alia prohibits dealing in narcotic drugs or psychotropic substances and section 21 and 22 of the NDPS Act provide for punishment for contravention of the provisions of this Act in relation to manufactured drugs/psychotropic substances and it is Section 9A of the Act gives Central Government the power to issue orders to control and regulate controlled substances and section 25A of the Act provides the punishment for contravention of section 9A. Section 21 of the NDPS Act makes it clear that no person shall, in contravention of any provision of this Act or any Rule or Order made or condition of license granted thereunder, manufacture, possess, sell, purchase, transport, import, export interstate or use any manufactured drug or **any preparation containing any manufactured drug**. Similarly, as regards the psychotropic substances, since the definition of psychotropic substances as provided in section 2(xxiii), reproduced*

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hereinabove, itself includes the salt or preparation of any psychotropic substance, it is not only an offence to deal with psychotropic substances but also their preparations. In contradistinction, the definition of controlled substance provided in section 2(viid) does not include within its ambit, a preparation of controlled substance. No doubt, the Central Government can by notification declare to regulate even a preparation of a controlled substance, but it is to be taken note of that with respect to pseudoephedrine, the controlled substance involved in the present case, vide notification no. SO 1296(E) issued by the Central Government on December 28, 1999, the Central Government chose to declare pseudoephedrine and their salts only as controlled substance for the purpose of section 2(viiid) and it is only vide another notification no. SO 834(E) dated 26.3.2013 that the Central Government declared a preparation of pseudoephedrine as a controlled substance. In other words, it can be safely stated that the Central Government being aware of the contents of pseudoephedrine, its salts and its preparation has chosen to regulate the preparation of pseudoephedrine only w.e.f 26.03.2013. In such view of the matter it is only with effect from 26/3/2013 that dealing with a preparation of pseudoephedrine in contravention of the orders issued by the Central Government, can stated to be an offence u/s 9A of the NDPS Act and that this court cannot by drawing analogies declare the same to be an offence with effect from 28/12/1999. It has been rightly submitted by Ld. Defence counsel that in the interpretation of penal provisions, a strict interpretation has to be

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given and that this court cannot deem certain acts to be offences without the legislature having provided for the same. In such view of the matter, this court is of the considered opinion that the contention being made by Ld. Defence counsel that prior to 26.03.2013, dealing with the preparation of pseudoephedrine cannot be stated to be an offence under the provisions of NDPS Act is to be upheld.

Coming now to the question whether the tablets recovered in the present case can be stated to be a preparation of pseudoephedrine and its salts or not, it will be relevant herein to refer to the deposition of PW4 Sh. V.K. Sharma, Chemical Examiner CRCL and the report tendered by him. Admittedly it is this expert who has analysed the samples of the tablets recovered in the present case. As per the deposition of this witness recorded on 28/3/2014, the tablets analysed by him contained apart from pseudoephedrine hydrochloride, another chemical. The said expert witness has explained that pseudoephedrine hydrochloride is completely soluble in water and since in the present case during analysis of the tablets, he had found the tablets only partially soluble in water, he has come to a conclusion that the tablets analysed by him would not be containing 100% pseudoephedrine hydrochloride. On a query by this court the said witness has also stated that presently CRCL does not have the facilities to determine what the other constituents could be but that the same would be a chemical substance only. He has further categorically stated that a tablet is always termed to be a preparation. Despite the aforementioned categorical deposition of the CRCL expert

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that the tablets in the present case are to be regarded as preparation of pseudoephedrine, Ld. SPP Sh. P.C. Aggarwal had contended that the tablets cannot be stated to be a preparation in view of the definition of term “preparation” provided in section 2 (xx) of the NDPS Act. According to Ld. SPP as per the said definition, a preparation of a controlled substance must contain more than one controlled substance. I am afraid that the said contention of Ld. SPP cannot be accepted for the term “preparation” as defined u/s 2 (xx) of the NDPS Act makes it clear that it can constitute even of one controlled substance without there being any other active chemical. As per the provisions of the said sub section '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. Though the said definition can be read even for a controlled substance (in view of clause 2 (k) of the Narcotics Drugs and Psychotropic Substance Rules, 1985), the same cannot be at all interpreted as contended by Ld. SPP to mean that a preparation of controlled substance must contain more than one controlled substance or an active chemical constituent other than one controlled substance. The said definition makes it clear that a preparation of controlled substance can constitute of only one controlled substance in dosage form or any solution or mixture.

In view of the discussion herein above this court is of the considered opinion that at this stage, as per the deposition of PW4, the tablets in the

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present case are to be held as a preparation of pseudoephedrine and that therefore the contention of the Ld. Defence counsel that the accused persons could not have been stated to have committed an offence on 14/11/2012 (i.e. prior to the notification SO 834(E) dated 26/3/2013) cannot be brushed aside and therefore at this stage the accused persons are entitled to the grant bail.

16. I have gone through the evidence which has come up on record PW4 Sh. V. K Sharma, Chemical Examiner, in his cross examination has contended that on the basis of the fact that the tablets in question were only partially soluble in water it can be said that the tablets analysed were not containing 100 % pseudoephedrine hydrochloride and would be containing another chemical. At this point my Ld. Predecessor specifically raised a court query to the witness to which he replied that presently CRCL does not have the facility to determine what the other constituents could be. He categorically admitted that a tablet is always to be termed as a preparation.
17. Furthermore the FSL report produced on record which is Ex. PW4/A also shows that all the samples sent for reference tested positive for pseudoephedrine.
18. Having gone through the abovesaid order passed by my Ld. Predecessor and the provisions relied upon by her, it is clear that it is the section 8 of the Act which inter alia prohibits dealing in narcotic drugs or psychotropic substances and section 21 and 22 of the NDPS Act provide for punishment for contravention of the provisions of this Act in relation to manufactured

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drugs/psychotropic substances. Further section 9A of the Act gives Central Government the power to issue orders to control and regulate controlled substances and section 25A of the Act provides the punishment for contravention of section 9A. Section 21 of the Act makes it clear that no person shall, in contravention of any provision of this Act or any Rule or Order made or condition of license granted thereunder, manufacture, possess, sell, purchase, transport, import, export interstate or use any manufactured drug or any preparation containing any manufactured drug. Similarly, as regards the psychotropic substances, since the definition of psychotropic substances as provided in Section 2(xxiii), itself includes the salt or preparation of any psychotropic substances, it is not only an offence to deal with psychotropic substances but also their preparations. In contradistinction, the definition of controlled substance provided in Section 2(viid) does not include within its ambit, the preparation of controlled substance.

19. With respect to pseudoephedrine, the controlled substance involved in the present case being notified vide notification No. SO 1296(E) issued by the Central Government on December 28, 1999, the Central Government has chosen to declare ephedrine, pseudoephedrine and their salts as controlled substance for the purpose of section 2(viid). In other words, the Central Government, vide the said notification has not chosen to regulate the manufacture, sale, purchase, distribution, use or consumption of any preparation of pseudoephedrine or its salts. Further, the said omission made by the Central Government does not appear to be inadvertent. The Schedules to the Order, 2013 makes a distinction between pseudoephedrine, its salt on the one hand and its preparation on the other hand. Schedule A to the said order is a list of those controlled substances whose manufacture, distribution, sale,

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purchase, possession, storage and consumption has been made subject to controls as specified in the order and pseudoephedrine and its salts is mentioned as one of such substances in the list of the Schedule. On the other hand, Schedule B and Schedule C contain the list of those controlled substances whose export and import from and into India have been made subject to control by the Central government and in the said two Schedules, it is not only pseudoephedrine and its salts but the preparation of pseudoephedrine and its salts also, which have also been included. In other words, the Central Government being aware of the distinction between pseudoephedrine, its salts and its preparation, has though chosen to regulate the export and import of the preparation of pseudoephedrine and its salts, it has not chosen to do so within India itself and therefore, the accused persons have not committed any offence under NDPS Act.

20. In view of the fact that the preparation of pseudoephedrine has not been chosen to be regulated by Central Government in India in view of the NDPS (Regulation of Controlled Substances) Order 2013 and the Schedules as mentioned above, the accused persons have not committed any offence under the NDPS Act, contravention if any, may be that of any provision of the Drugs and Cosmetics Act, 1940.

21. In view of the aforesaid, without going into other contentions, all the accused are acquitted for the offences charged with.

**Announced in open Court
on this 31st day of May, 2018**

**(Sudesh Kumar II)
Special Judge NDPS : New Delhi
Patiala House : New Delhi**