SUPREME COURT OF INDIA

Hira Singh

Vs.

Union of India

Crl.A.No.722 of 2017

(Arun Mishra and Indira Banerjee,JJ.,)

22.04.2020

JUDGMENT

M.R.Shah,J.,

1. Not agreeing with the view taken by this Court in the case of E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161 taking the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration (paragraphs 15 and 19), the following questions are referred to a three Judge Bench, vide order dated 3.7.2017:

> (a) Whether the decision of this Court in E. Micheal Raj (supra) requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") with Section 21?
>
> (b) Does the impugned notification issued by the Central Government entail in redefining the parameters for constituting an offence and more particularly for awarding punishment?
>
> (c) Does the NDPS Act permit the Central Government to resort to such dispensation?
>
> (d) Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?
>
> (e) Whether Section 21 of the NDPS Act is a stand along provision or intrinsically linked to the other provisions dealing with "manufactured drug" and "preparation" containing any manufactured drug? Arguments on behalf of the Union of India

2. Shri Aman Lekhi, learned Additional Solicitor General of India appearing on behalf of the Union of India has vehemently submitted that the decision in E Micheal Raj (supra) has omitted to consider the interplay between different provisions of the NDPS Act. It is submitted that it has focused only on the interpretation of Section 21 of the NDPS Act, without giving effect to the purport of the said provision. It is submitted that the view taken by this Court in the case of E Micheal Raj (supra) in paragraphs 15 and 19 that it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity, and the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purposes of imposition of punishment, it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration is clearly wrong and as such contrary to the entire scheme of the NDPS Act. He argued that if the entire scheme including the object and purpose of the NDPS Act is considered, it can be seen that where drugs are sold as mixture the determination for the purposes of punishment would be aggregated quantity of the mixture;

2.1 In the case of E Micheal Raj (supra), this Court has failed to consider that the expression "offending material" finds no mention in the NDPS Act. It is submitted that it is also not the intention of the legislature to levy punishment based on content of the offending drug in the mixture. It is submitted that in the case of E Micheal Raj (supra), this Court has erred in relying upon the decision in the case of *Ouseph v. State of Kerala*[1] as the said decision was not binding as precedent as it passed sub-silentio the issue with which E Micheal Raj (supra) was seized with;

2.2 While deciding the case in the case of E Micheal Raj (supra), this Court has ignored material provisions of the NDPS Act and the entire statutory scheme to reach a conclusion which was not borne out both by the spirit and the terms of the statute and defeated the very object behind the enactment and the amendment;

2.3 The NDPS Act, as originally enacted in 1985 included in Section 2(xx) the definition of 'preparation'. It is submitted that the definition of 'preparation' reveals that preparation means "in relation to NDPS" one or more drugs or substance in dosage or solution or mixture. The 'mixture' is defined as mechanical mixture or two or more substances as distinct from chemical combination or a fluid with foreign substance in suspension or foreign element in a composition. The 'solution' is defined as a liquid or semi-liquid preparation obtained by the combination of a solid with the solvent. The 'dosage' means a definite quantity or something regarded as analogous to medicine in use or effect. A bare look at the definitions, it is apparent that a drug or substance can be mixed with one or more substances (mixture) or change its physical state by means of any fluid or solvent (solution) or be divided or apportioned (dosage). In other words, the NDPS Act as originally enacted dealt not only with the pure content of the drug or psychotropic substance but, its preparation in a mixture, solution or dosage. In the case of E Micheal Raj (supra), there is no reference to the aforesaid;

2.4 That as per Section 2(xxxiii), also as originally enacted, defining 'psychotropic substance' shows that psychotropic substance includes "a preparation of such substance". It is submitted that the said section has to be read with the Schedule

appended to the NDPS Act. The Schedule itself, in Entry 77, included “salts and preparation” of the list of psychotropic substance mentioned in Entry 1 to 76 of the Schedule. The original NDPS Act therefore dealt with “preparations” of psychotropic substances. Further, contravention relating to psychotropic substance was punishable under Section 22 of the NDPS Act and reading Section 22 with Section 2(xx), 2 (xxxiii) and the Schedule makes it apparent that punishment covered preparation of psychotropic substance and was not based on pure substance content. Even Section 2(xiv) of the NDPS Act, as originally enacted, defined 'narcotic drugs’, they were defined to mean (i) Coca leaf; (ii) Cannabis; (iii) Opium; (iv) Poppy Straw; and (v) Manufactured drugs. Each of the above was defined separately. Therefore, even in the NDPS Act, as originally enacted, the 'narcotic drugs’ included their mixtures and preparations. It is only in the definition of 'poppy straw’ that the expression mixture or preparation finds no mention;

2.5 He argued that the only provision in the NDPS Act, as originally enacted, which specified the quantity was Section 27, the said section mentioned “small quantity or narcotic drugs or psychotropic substance” and provided for milder punishment where it is proved that possession in contravention of the NDPS Act or rule was intended for personal consumption or there was consumption of any narcotic drug or psychotropic substance. It is submitted that “small quantity” was notified in Notification No. S.O.827 of 14.11.1985 which included only 5 drugs. By subsequent notifications, additions were made and more drugs were included in the list. Therefore the “small quantity” under the amended Act is much higher than that specified in the earlier notification under the original NDPS Act. Thus, the NDPS Act, as originally enacted, insofar as narcotic drugs and psychotropic substances are concerned, only recognized “small quantity where possession was for personal consumption or there was consumption. The punishment prescribed under the NDPS Act, originally enacted except in Section 20 which in some circumstances contemplated imprisonment up to 5 years, provided for punishment of not less than 10 years, but extendable to 20 years. The NDPS Act, as originally enacted, covered preparations of the narcotic drugs and psychotropic substances and not merely their pure drug content;

2.6That in the year 1989, the NDPS Act was amended by Act No.2 of 1989. That notwithstanding the amendment, the original scheme of punishment under NDPS Act covering preparations and not just pure content was not interfered with. In the year 2001, the NDPS Act was further amended and clauses (viia) defining “commercial quantity” and (xxiiia) defining “small quantity” were added. A bare look at the two sections shows that the same covered quantity greater/lesser, as the case may be, than the “quantity specified” by the Central Government by notification in the official gazette of the narcotic drugs and psychotropic substances. Even in/after the 2001 amendment, no change was made in the definition of “preparation” or in the definition of “narcotic drugs” and “psychotropic substances”, more particularly even after the addition of the definitions of “small quantity” and “commercial quantity”. Even the residuary entry in the list of Psychotropic Substances, i.e., Entry 77 in the Schedule of the NDPS Act, as originally enacted, is retained even after the amendment as 'Entry

111’ of the said Schedule. The only reason for the amendment in the year 2001 was that all preparations in the NDPS Act, as originally enacted, were uniformly punishable with imprisonment from 10 to 20 years and even the condition for bail did not make any reference to the quantity. It was for this reason that Section 37 itself was amended to specifically deal with “commercial quantity” by the amendment of 2001;

2.7He argued that the “commercial quantity” would necessarily apply to preparations of narcotic drugs and psychotropic substances as the clauses which were added needed to be read with the provisions of the statute which already stood therein and had not been amended. This was consistent with the scheme of the NDPS Act, as originally enacted. The amendment did not in any manner whatsoever tinker with the same. It is for this reason that the amended Act referred in the newly inserted clauses to “commercial quantity” and “small quantity”. The emphasis therefore was on the quantity in relation to the drug/substance and not the content of the drug/substance. It was never the intent to modify the application of the statute to deal with pure quantity of the narcotic drugs and psychotropic substance. The same came to be reinforced by the notification published by the Central Government after coming of the 2001 Amendment which contained Note 2 as under:

“2. The quantities shown against the respective drugs listed above also apply to the preparations of the drugs and the preparations of the substances of Note 1 above.”
It is submitted that what was provided in Note 2 was always there since the original enactment.

2.8 He argued that the “small quantity” now mentioned in the notification is much higher than the “small quantity” in the NDPS Act as originally enacted. It is for this reason that both Sections 27 and Section 64A have also been amended. The possession having been taken out of Section 27, there was no need to provide for milder punishment for possession as under Section 27 of the original NDPS Act. Section 27 as amended therefore is confined to “consuming” any narcotic drugs or psychotropic substance only and the immunity under Section 64A is limited to 'addicts’ amongst those to whom Section 27 applies, in other words, possession even of “small quantity” is outside Section 27 of the amended Act and immunity is not available to all the persons to whom Section 27 applies but, only to such of them as are 'addicts’. This is a change consequential upon the grading of punishment but, the punishment continues to relate only to the quantities of the narcotic drugs and psychotropic substance which includes their preparations and not the pure drug content;

2.9 Even without Note 4 of the notification, the NDPS Act would apply to the entire mixture or solution of the narcotic drugs and psychotropic substance. It is further submitted that the addition of Note 4 under the notification of 2009, is irrelevant to the controversy and Judgment in E Micheal Raj (supra) cannot be sustained even if Note 4 is ignored. The notification therefore does not in any manner re-define the parameters for constituting an offence or awarding punishment under the NDPS Act. Shri Lekhi, learned Additional Solicitor General

of India has heavily relied upon the decision of the U.S. Supreme Court in the case of Chapman v. United States (1991) 500 US 453 in support of his submission that the sentences should be based exclusively on the weight of the "mixture or substance" and not on the content - pure drug. It is submitted that in the said case, the petitioner was convicted of selling 10 sheets of blotter paper containing 1000 doses of LSD. The weight of LSD alone was approximately 50mg and combined weight of the LSD and the blotter paper was 5.7 grams. The petitioner was sentenced for mandatory minimum sentence of 5 years which was applicable for offences of distributing more than 1 gram of the substance. It is submitted that before the US Supreme Court, it was contended on behalf of the petitioner that weight of the carrier should not be included when computing the appropriate sentence for LSD distribution. The U.S. Supreme Court rejected the said contention and observed and held as under:

"We think that petitioners reading of the statute, a reading that makes the penalty turn on the net weight of the drug rather than the gross weight of the carrier and drug together is not a plausible one. The statute refers to a "mixture or substance containing a detectable amount". So long as it contains a detectable amount, the entire mixture or substance is to be weighed when calculating the sentence. This reading is confirmed by the structure of the statute. With respect to various drugs, including heroin, cocaine, and LSD, it provides for mandatory minimum sentences for crimes involving certain weights of a "mixture or substance containing a detectable amount" of the drugs. With respect to other drugs, however, namely phencyclidine (PCP) or methamphetamine, it provides for a mandatory minimum sentence based either on the weight of a mixture or substance containing a detectable amount of the drug, or on lower weights of pure PCP or methamphetamine. For example, S. 841(b)(1)(A)(iv) provides for a mandatory 10 year minimum sentence for any person who distributes "100 grams or more of ... PCP...or 1 kilogram or more of a mixture or substance containing a detectable amount of .. PCP..." Thus, with respect to these two drugs, Congress clearly distinguished between the pure drug and a "mixture or substance containing a detectable amount of" the pure drug. But with respect to drugs such as LSD, which petitioners distributed, Congress declared that sentences should be based exclusively on the weight of the "mixture or substance". Congress knew how to indicate that the weight of the pure drug was to be used to determine the sentence, and did not make that distinction with respect to LSD."

".A "mixture" is defined to include "a portion of matter consisting of two or more components that do not bear a fixed proportion to one another.. "

".By measuring the quantity of the drugs according to the "street weight" of the drugs in the diluted form in which they are sold, **1928 rather than according to the net weight of the active component, the statute and the Sentencing Guidelines increase the penalty for persons who possess large quantities of drugs, regardless of their purity. That is a rational sentencing scheme."

(underline is ours)

2.10 He argued that as such the NDPS Act does not make any distinction between pure drug and a preparation containing the drug. The Act applies to the street

weight of the drug in the form in which they are sold rather than the net weight of the active component. This is what the Act has consistently been provided since its inception. The appellants want this Court to read the statute in a manner the provisions do not warrant. It is submitted that for instance, a "small quantity" of heroin is 5 grams, which if taken as only the pure drug content will translate into 100 grams of street level heroin. At the rate of 0.25 gram heroin the mixture of 100 grams of heroin can yield about 400 doses of heroin. It can never nor could have been the intention of the legislature or for that matter of the Government to send the person who possesses or sells heroin equivalent to 400 doses to a mere six months imprisonment. That therefore if the submission on behalf of the appellants is accepted, in that case, it will be contrary to the object and purposes of enactment of the NDPS Act and in most of the cases there will be no punishment for the "commercial quantity" and the real culprits/accused will go away with the minor punishment;

2.11 It is further argued that as per the Crawford on Interpretation of Law (Statutory Construction) "the Court should strive to avoid a construction which will tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous or contrary to the public interest. That construction should be accepted which will make the statute effective and productive of the most good, as it is presumed that these results were intended by the legislature. In order to carry out the legislature intent, it is therefore apparent that the statute should be given a rational, logical and sensible interpretation";

2.12 It is further pointed out that the NDPS Act has been passed as per Statement of Object and Reasons, to "strengthen the existing controls over drug abuse, considerably enhanced the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances". The stringency of control cannot disregard the conditions in which the Act applies. The definitions clearly show that the object of the Act was to deal with the street weight of the drugs in the diluted form in which they are sold and not the net weight of the active component. The legislature know that the inactive ingredients will be combined with the pure drugs and substances and it would be the drugs or substances so prepared that would be sold to the consumers. He argued, if the arguments of the appellants are accepted, the legislative intent would be frustrated through a construction which will render the Act sterile and which in the circumstances in which the Act is to operate cannot be called either rational or sensible.

2.13 Shri Lekhi, learned Additional Solicitor General of India has also relied upon the decision of this Court in the case of *urlidhar Meghraj Loya and another v. State of Maharashtra and others*[2], *as well as, Reema Aggarwal v. Anupam and others*[3]in support of his submission that while interpreting and/or considering a particular statute, a judge must not alter the material of which the Act is woven, but he can and should iron out the creases. The appellants want this Court to alter the material of which the NDPS Act is woven. In the case of *Rajinder Singh v. State of Punjab*[4], it was observed and held by this Court that a statute must be given a fair, pragmatic, and common-sense interpretation so as to fulfil the object

sought to be achieved by Parliament. Therefore, the judgment in E Micheal Raj (supra) is wrong and the preparations in totality and not the actual drug content will be seen for computing the quantity. It is submitted that as such E Micheal Raj (supra) is per incuriam and even the notification of 2009 does not redefine the parameters for constituting the offence under the NDPS Act. Section 21 of the NDPS Act is not a standalone provision and must be construed along with the other provisions in the statute as it is a settled principle of law that every statute must be construed as a whole and words in the statute take their meaning from the context and have to be understood to make a consistent enactment, i.e., ex visceribus actus. It is submitted that even the insertion of Note 4 was ex abundanti cautela and even without it the same intention could be culled out from the statute as it stood. It made no change but was intended only to remove any misconception and was used merely by way of abundant caution.

3. Shri R.K. Kapoor, learned Advocate appearing on behalf of the appellant in Criminal Appeal No. 722 of 2017 has made the following submissions:

3.1 That the challenge in the present appeal is to the impugned notification dated 18.11.2009 issued by the Central Government in exercise of the powers conferred by Clauses (viia) and (xxiiia) of Section 2 of the NDPS Act. The Central Government did not have the power to issue the impugned notification by which it has empowered the inclusion of quantity of the neutral material also along with the quantity of the narcotic drugs or psychotropic substances in columns 5 & 6 of the table, in relation to the narcotic drugs or psychotropic substances mentioned in the corresponding entry in column nos. 2 to 4 of the said table. Such power to include the neutral material is not provided under clauses (viia) and (xxiiia) of Section 2 of the NDPS Act. Thus, the impugned notification dated 18.11.2019 is ultra vires the provisions of the NDPS Act, read with the amended 2001 Act which brought about rationalisation in awarding the punishment;

3.2 By the impugned notification, Note 4 has been added after Note 3 at the end of the table appended to the NDPS Act, included vide Notification S.O. 1055 (E) dated 19.10.2001, whereby the notification was issued specifying “small quantity” and “commercial quantity” of the narcotic drugs or psychotropic substances mentioned in column nos. 5 & 6 of the table, in relation to the narcotic drugs or psychotropic substances mentioned in the corresponding entry in column nos. 2 to 4 of the said table;

3.3 The result of the issuance of the impugned notification is that the offender would be awarded the punishment by looking into the total quantity of the material found in possession of the offender even if on chemical analysis it is found that the actual content of the narcotic drug or psychotropic substance is covered under the “small quantity”, but by adding the neutral material the punishment awarded is for “commercial quantity”. For instance, there are two offenders. One “A” is having quantity of 4 grams heroin which is less than the “small quantity” which is 5 grams, mentioned in column no.5 of the table. Another “B” is in possession of 1 gram of heroin, but has mixed it with “neutral material” of 250 grams, it becomes 251 grams, more than the “commercial quantity” which is 250 grams as per

column no.6 of the table. It is submitted that if these two offenders "A" and "B" are convicted, then "A" would be given a punishment for 1 year while "B" can be given up to 20 years though actual content of the offending drug is lesser in case of "B". It means one year punishment for heroin and 19 years for "neutral material" which is not otherwise punishable under the NDPS Act. Thus, the effect of Note 4 is more the dilution, less the potency of the drug, but more the punishment. Therefore, it would lead to injustice and would lead to variation in the punishment of the accused depending upon the quantity of the "neutral material" instead of the "drug material";

3.4 The only power given to the Government is to increase or reduce the quantity of the narcotic drugs or psychotropic substance mentioned in column no.5 and 6 and nothing more. For instance, in the case of heroin, the quantity for the "small quantity" can be reduced from 5 gram to 1 gram, and for "commercial quantity", it can also be reduced from 250 grams to 100 grams or so, but no "neutral material" can be permitted to be added to award the quantum of punishment;

3.5 No "neutral material" has been specified in column no.2 or column no.4 of the table. If "neutral material" was also to be made punishable under the NDPS Act, then it should have been mentioned under column no.2 and 4 of the table and then correspondingly the quantity of the "neutral material" would also have been specified under "small quantity" and "commercial quantity" under column nos. 5 and 6 of the table. Since "neutral material" is neither a narcotic drug nor a psychotropic substance, it has not been mentioned under column nos. 2 and 4 and, therefore, cannot be made punishable under Note 4;

3.6 In the year 2001, NDPS (Amendment) Act, 2001 was brought to rationalise the quantum of punishment for addicts and less serious offenders and severe punishment for serious offenders;

3.7 This Court in the case of E.Micheal Raj (supra) held that only the quantity of the offending article is to be taken into consideration for the purpose of punishment. If it has been mixed with any other substance, which is non-offending substance, then not the whole bulk is to be taken into consideration and that the punishment must be graded in relation to the quantity of the offending article only;

3.8 A person can be convicted and punished only to the extent it has been specifically provided under the provisions of the NDPS Act. If a person has to be punished then there must be specific power and provision for punishment and only to the extent the punishment has been provided for the commission of a particular contravention and for a particular specified substance as mentioned under column nos. 2 and 4of the schedule appended to the Act and not otherwise. Under the NDPS Act, Section 21 provides for punishment for contravention in relation to manufactured drugs and preparations thereof. Section 22 deals with punishment for contravention in relation to psychotropic substances. But there is no punishment for "neutral material" under the NDPS Act;

3.9 It is settled law that what cannot be done directly can also not be done indirectly. The NDPS Act was enacted by the Parliament. When in the NDPS Act itself the "neutral substance" has not been made punishable, the "neutral substance" cannot be made punishable by the exercise of the executive power by the Central Government by issuing he impugned notification. Where ever "neutral material" was to be included it has been specified under the NDPS Act itself. It cannot be added with each drug as mentioned in the table.

3.10 The expression "mixture" as such has not been defined under the NDPS Act, but it has a reference under the definition of the word "preparation". Even in the word "preparation", the reference is again to one or more of such drugs or psychotropic substances, but there is no reference to any "neutral material".

3.11 Making the above submissions, it is submitted that thus the Central Government has no power to make any amendment in Act No. 9 of 2001 and make the whole of the quantity of the allegedly recovered material from the offender as the "small, commercial or non-commercial quantity", by directing the inclusion of the "neutral substance" in it. Therefore, the notification dated 18.11.2009 is liable to be declared ultra vires and be struck down.

4. Shri Manoj Swarup, learned Senior Advocate appearing on behalf of the appellant in Criminal Appeal No. 721 of 2017 - Gursewak Singh @ Sewak v. State of Punjab, in addition, has made the following submissions:

4.1 The Act itself contemplates inclusion of "neutral material". Reliance is placed upon Sections 2(iii), 2(vi), 2(xv) and 2(xvi). That the Act itself provides the places where "neutral material" would be taken into account. The "neutral material" should be confined to the places permitted by the Act. Note 4 is to be limited to only such areas where "neutral material" is permitted by the Act. Only then Note 4 would be serving a clarificatory purpose;

4.2 In the event Note 4 goes beyond this, then Note 4 seeks to add something which is not in the Act. In that event, Note 4 would be legislating, identifying and defining what would constitute a criminal offence and in the process, Note 4 would be expanding the area covered by the Act. It is submitted that this would be impermissible in law. If "neutral material" is included across the board in all the narcotic drugs or psychotropic substances, then the object of the 2001 Amendment Act to rationalize sentence structure would be frustrated;

4.3 The Judgment of this Court in the case of E. Micheal Raj (supra) had noticed the distinction between "small quantity" and "commercial quantity" and the Objects and Reasons of the 2001 Amendment Act. It is thereafter that the Court concludes that the 2001 Amendment Act makes punishable vis-a-vis the "offending substance". It is submitted that there was no need to discuss Entry No. 239 of the 2001 notification in detail in the said judgment as Entry No. 239 was contained merely in a notification and was not the source of power. Therefore, E.Micheal Raj (supra) rightly concludes that the punishment should be commensurate to the quantity of the "offending substance" only;

5. Shri Anand Grover, learned Senior Advocate appearing on behalf of the proposed Intervenor - the applicant - Indian Drug Manufacturers' Association has, by and large, made the same submissions which are made by the learned Senior Advocate(s)/Advocate(s) appearing on behalf of the appellants. In addition, the following submissions are made:

5.1 In laying down thresholds for "small quantity" and "commercial quantity" for narcotic drugs and psychotropic substances vide the 2001 notification, the Central Government refers to the "chemical name" of the concerned drug in column 4 of the table. Thus, the "chemical name", which identifies a particular substance in terms of its actual chemical composition, is relevant for determining the quantity of such substance. If it were not, there would be no need to have column 4 and the chemical description of a substance in the 2001 notification, which lays down small and commercial quantity of narcotic drugs and psychotropic substances;

5.2 The only drugs for which the entry in column (4) for chemical name is not given in the 2001 notification are 'natural/plant-based drugs' namely, Cannabis and cannabis resin (Charas, Hashish) at S. No. 23; Coca Leaf at S. No. 26; Ganja at S. No. 55; Opium at S. No. 92; Opium Straw at S. No. 110 and Preparation made from the extract of tincture of Indian Hemp at S. No. 111. That the aforesaid is consistent with the statutory definitions of the aforesaid substances, which allude to 'with or without neutral material';

5.3 The quantity of the narcotic drug is also relevant for the purposes of determining whether a particular preparation is subject to the provisions of the NDPS Act or not. This is borne out by clause (xi) of section 2 of the NDPS Act which empowers the Central Government to notify a narcotic substance or preparation either to be a manufactured drug or to not be a manufactured drug;

5.4 By making the percentage content of the drug irrelevant, the impugned notification has the effect of bringing pharmaceutical preparations that are exempt from the NDPS Act, under the fold of the law through the backdoor.

i) E.g.: Entry 35 'Codeine' in the list of manufactured drugs vide Notification S.O. 826(E) dated 14/11/1985, Notification S.O. 40(E) dated 29/02/1993 and Notification S.O. 1431(E) dated 21.6.2011 (hereinafter collectively referred to as "notification on manufactured drugs").

ii) Similar exemptions are contained at Entries at Sl. No. 35, 36, 37, 48, 70, 76, 83 and 87 of the notification on manufactured drugs.

5.5 The impugned notification is, therefore, inconsistent with the notification on manufactured drugs issued by the Central Government in exercise of powers conferred by section 2(xi)(b) of the NDPS Act to declare a narcotic substance or preparation to be a manufactured drug or not to be a manufactured drug;

5.6 He argued that for legitimate entities like the members of the Applicant IDMA, the impugned notification leads to arbitrary and absurd consequences in that the license is given in terms of actual quantity of the drug, while punishment is imposed on the basis or total bulk quantity;

5.7 The Respondent was aware that the impugned notification is beyond the powers conferred under sections 2(viia) and (xxiiia) for notifying 'commercial' and 'small' quantities of narcotic drugs and psychotropic substances under the NDPS Act. Accordingly, it sought to introduce legislative amendments in 2011 by introducing the NDPS (Amendment) Bill, 2011 (Bill 78 of 2011) in the Lok Sabha on 8th September, 2011. The Proposed amendments in section 2(viia) and 2(xiiia) of the NDPS Act were as follows:

Section 2(viia) "commercial quantity", in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity of such drug, substance or preparation of such drug or substance greater than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazeete" (proposed amendments are underlined) Identical changes were proposed in definition of section 2(xxiiia) for 'small quantity';

5.8 The aforesaid proposed amendments were rejected by a Parliamentary Standing Committee with the following observations: -

"meanings denoted by the terms/expressions 'preparation' and 'otherwise' in proposed amendments are vague and unspecific. Such ambiguity in the clause would lead to arbitrariness in the interpretation of the law and may weaken the rationalized penalty structure proposed amendments intent to provide specific provisions for considering the pure drug content of a recovery to determine the consequential penalty/punishment for an offender, no word/term/clause with ambiguous meaning should be used in the provisions." The Respondent withdrew the aforesaid amendments in 2013. They are not part of the NDPS (Amendment) Act, 2014 (Act 16 of 2014);

5.9 Entry 239 talks of a mixture or preparation of two or more drugs with or without neutral material and has asterisk (*, **) in column 5 and 6. The Asterisks are explained by indicating that the lesser of the small quantities of the respective narcotic drugs or psychotropic substances will be taken for determining the small quantity and lesser of the commercial quantity will be taken to determine commercial quantity. Entry 239 along with asterisk makes it clear that it comes into operation only when the seizure is a combination of two or more drugs, i.e. - a combination of two or more narcotic drugs [eg: 'charas' and 'ganja'], or two or more psychotropic substances [e.g.: 'Fentanyl' and 'Zolipidem'] or a combination of narcotic drugs and psychotropic substances [eg: 'Cocaine' and 'Lysergide (LSD)]. The wording in Entry 239 of 2001 notification is similar to that in entry (viii) in the Table to section 31A of the NDPS Act, which also deals with a mixture of two or more drugs. That neither entry (viii) in the Table to section 31A of the NDPS Act nor Entry 239 of the 2001 notification suggest that in a mixture

of two or more narcotic drugs, the weight of the entire mixture i.e. the aggregate weight of both the drugs has to be taken into consideration;

5.10 In determining the quantity involved in a mixture of two or more drugs, it is the substance with a lesser or lower threshold, whether for 'small' or 'commercial' quantity, which will be used as the reference. To illustrate, a mixture weighing 200 gms is seized. The constituents of the said seizure are: - 110 gms of charas and 90 gms of ganja. As per the 2001 notification, the small quantity of charas at entry 23 is 100 gms while the small quantity of ganja at entry 55 is 1000 gms or 1 kg. By virtue of Entry 239, the quantity seized in this case will be determined in relation to charas and not in relation to ganja. Accordingly, the person from whom such seizure is effected will be liable for intermediate quantity [quantity of charas found being more than the small quantity but less than commercial quantity] and will not be able to claim the benefit of the quantity threshold for ganja, though ganja found on him is lesser than the small quantity of ganja specified in the 2001 notification;

5.11 He argued that E. Micheal Raj (supra) is decided correctly as it reviews various provisions of the NDPS Act; examines legislative intent of the NDPS Amendments in 2001; correctly decides that punitive consequences under the NDPS quantity are relatable to actual amount of offending material in the seizure; it reiterates the position stated in the statute.

5.12 It is submitted that the Supreme Court of Bangladesh in its decision dated 08.05.2012 in the case of Md. Jaffar Alam v The State, Criminal Misc. Case No. 37461 of 2011 held that actual and real quantity of the narcotics in question be ascertained accurately and the law interpreted carefully and strictly.

Discussion

6. Having heard the learned advocates for the respective parties and considering the reference order, the question which is posed for consideration of this Court is whether the NDPS Act envisages mixture of narcotic drugs and seized material / substance should be considered as a preparation in totality or on the basis of actual drug content of the specific narcotic drugs ? In other words, the question as to whether while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), the quantity of neutral substance(s) is notto be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity ? At this stage, it is required to be noted that as such and after the decision of this Court in the caseof E.Micheal Raj (supra) by Notification No.S.O.2942(E) dated 18.11.2009, "Note 4" has been added to Notification S.O.1055(E) dated 19.10.2001 specifying the "small quantity and commercial quantity" of the narcotic drugs or psychotropic substances covered under the NDPS Act. Note 4 which has been added by the aforesaid Notification reads as follows:

"The quantities shown in column 5 and 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substance of the particular drug in dosage form or isomers, esters, ethers and salts or these drugs, including salts or

esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content."

6.1 At the outset, it is pertinent to note that as such prior to the decision of this Court in the case of E.Micheal Raj (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance that one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity", a consistent view was that for the purpose of determining a "small quantity or commercial quantity" the weight of entire manufactured drug / preparation / mixture seized including that of the neutral substance is required to be taken into consideration. However, for the first time in the case of E. Micheal Raj (Supra), a contrary view is taken solely on considering Narcotic Drugs and Psychotropic Substances (Amendment) Act,2001, by which Section 21 of the NDPS Act came to be amended.

6.2 Therefore, first of all we would like to consider the reasoning given by this Court in the case of E.Micheal Raj(Supra). The facts indicate that what was seized in E.Micheal Raj (Supra) was 4 kgs of Heroin, which would fall in Entry 56 of the Notification dated 19.10.2001. As per the Notification dated 19.10.2001 in case of Heroin 5gms is a small quantity and 250 gm is a commercial quantity. However, this Court considered the substance seized - Heroin as Opium derivative and hence a manufactured drug and therefore, treating the seized drug as opium derivative, this Court held the seized material as small quantity and awarded punishment accordingly. While holding so, this Court considered the Statement of Objects and Reasons concerning the Amendment Act, 2001 and thereafter observed in para 12 to 15 as under:

"12. The possession of offending substance would be considered an offence punishable under the NDPS Act, as heroin is an opium derivative as per Section 2(xvi)(e) which says that all preparations containing more than 0.2 percent of morphine or containing any diacetylmorphiney is an opium derivative. Further, according to Section 2(xi), all opium derivatives fall under the category of manufactured drug. Thus, we conclude that the offending substance is an opium derivative and hence a manufactured drug, the possession of which is in contravention of the provisions of Section 8 of the NDPS Act which prohibits certain operations to the effect that no person shall 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.

13. In the present case, the opium derivative which has been found in possession of the accused-appellant is prohibited under Section 8 of the NDPS Act and thus punishable under Section 21 thereof. The question is only with regard to the quantum of punishment.

14. As a consequence of the Amending Act, the sentence structure underwent a drastic change. The Amending Act for the first time introduced the concept of commercial quantity in relation to narcotic drugs or psychotropic substances by adding clause (viia) in Section 2, which defines this term as any quantity greater than a quantity specified by the Central Government by notification in the Official Gazette. Further, the term 'small quantity' is defined in Section 2, clause (xxiiia), as any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. Under the rationalised sentence structure, the punishment would vary depending upon whether the quantity of offending material is 'small quantity', 'commercial quantity or something in-between.

15. It appears from the Statement of Objects and Reasons of the Amending Act of 2001 that the intention of the legislature was to rationalize the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentence, the addicts and those who commit less serious offences are sentenced to less severe punishment. Under the rationalised sentence structure, the punishment would vary depending upon the quantity of offending material. Thus, we find it difficult to accept the argument advanced on behalf of the respondent that the rate of purity is irrelevant since any preparation which is more than the commercial quantity of 250 gms. and contains 0.2% of heroin or more would be punishable under Section 21(c) of the NDPS Act, because the intention of the legislature as it appears to us is to levy punishment based on the content of the offending drug in the mixture and not on the weight of the mixture as such. This may be tested on the following rationale. Supposing 4 gms. of heroin is recovered from an accused, it would amount to a small quantity, but when the same 4 gms. is mixed with 50 kgs. of the powered sugar, it would be quantified as a commercial quantity. In the mixture of a narcotic drug or a psychotropic substance with one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance. It is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity. The intention of the legislature for introduction of the amendment as it appear to us is to punish the people who commit less serious offences with less severe punishment and those who commit grave crimes, such as trafficking in significant quantities, with more severe punishment."

6.3. On considering the aforesaid reasoning given by this Court in the case of E.Micheal Raj (Supra), we are of the opinion that while holding that in the mixture of a narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance is not to be taken into consideration and it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity", this Court has not at all considered the relevant entry in the Notification dated 19.10.2001. As observed herein above, what was seized was heroin which falls in Entry 56. What was seized was not opium and / or opium derivative. There is no specific finding even given by this Court that it would fall under Entry 239 namely any mixture or preparation that of with or without the neutral material.

Therefore, the case of mixture of narcotic drugs or psychotropic substance was not at all in direct consideration of this Court.

6.4. Even it does not appear that this Court took into consideration Note 2 of the Notification dated 19.10.2001, which reads as follows:

"The quantities shown against the respective drugs listed above also apply to the preparations of the drug and the preparations of substances of note 1 above." If note 2 would have been considered by this Court and seized material was "Heroin" in that case and what was seized was 4.5 kg heroin, the Court would have considered the same as a "commercial quantity" as considering Entry 56, 5gms is "small quantity" and 250 gms and above is a "commercial quantity". Therefore, as such, we are not in agreement with the view taken by this Court in the case of E.Micheal Raj (Supra) taking the view that in mixture of a narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance is not to be taken into consideration and it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity".

7. Even considering the reasons while arriving at aforesaid conclusion, it appears to us that the Statement of Objects and Reasons concerning the Amendment Act, 2001 has not been properly appreciated and/or considered and/or properly construed. Considering the statement of objects and reasons concerning the Amendment Act of 2001, by which, two tier punishment was provided one for small quantity and another for commercial quantity, it cannot be said that intention of the legislature was to consider only the actual content by weight of offending drug for the purpose of determining whether it would constitute small quantity or commercial quantity. The Statement of Objects and Reasons of the Amendment Act, 2001 is as follows:

" The Statement of Objects and Reasons concerning the Amending Act of2001 is as follows:

Narcotic Drugs and Psychotropic Substances Act. 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years' rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences."

On a bare reading of the Statement of Objects and Reasons, it cannot be said that the intention of the Legislature was to consider the actual content by weight of the offending drug for the purpose of determining whether it would constitute small quantity or commercial quantity. Therefore, we are of the opinion while holding that it is only the actual content by weight of the offending drug to be considered for the purpose of determining whether it would constitute small quantity or commercial quantity, this Court has read more than what was stated in the Statement of Objects and Reasons.

7.1 Therefore, while deciding the case in the case of E.Micheal Raj (Supra), this Court had not at all considered Note 2 to the Notification dated 19.10.2001 and has read much more than what is stated in the Statement of Objects and Reasons of Amendment Act, 2001 and for the reasons stated herein below, even on merits also, we are not in agreement with the view taken by this Court in the case of E.Micheal Raj (Supra) that for the purpose of determining the "small or commercial quantity" in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant. At this stage, it is required to be noted that even before this Court in the case of E.Micheal Raj (Supra), it was a case of "heroin" and not at all case of mixture falling in entry 239 of the Notification dated 19.10.2001.

8. On merits whether any mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", the Statement of Objects and Reasons of NDPS Act is required to be considered. As per the preamble of NDPS Act, 1985, it is an Act to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operation relating to Narcotic Drugs and Psychotropic Substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents.

8.1. In the case of *Directorate of Enforcement vs. Deepak Mahajan and Another reported in*[5], it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted following passage in Maxwell on Interpretation of Statutes, 10th Edition page 229:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the

enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

8.2 Therefore, considering the statement of objects and reasons and the preamble of the NDPS Act and the relevant provisions of the NDPS Act, it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from sub-clause (viia) and (xxiiia) of Section 2 of NDPS Act emphasis is on Narcotic and Drug or Psychotropic Substance (Sections 21, 22, 23, 24, 27 and 43). Even in the table attached to the Notification dated 19.10.2001, column no. 2 is with respect to name of Narcotic Drug and Psychotropic Substance and column nos. 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19.10.2001 specifically provides that quantity shown against the respective drugs listed in the table also apply to the preparations of the drug and the preparations of substances of note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or the commercial quantity” with respect to Narcotic Drugs and Psychotropic Substance mentioned in column no.2 the quantity mentioned in the clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs / psychotropic drugs mentioned in column no.2 and any mixture or preparation that of with or without the neutral material of any of the drugs mentioned in table, lesser of the small quantity between the quantities given against the respective Narcotic Drugs or Psychotropic Substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example, mixture of 100 gm is seized and the mixture is consisting of two different Narcotic Drugs and Psychotropic Substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid

two respective Narcotic Drugs and Psychotropic Substance is required to be considered. For the purpose of determination of the "small quantity or commercial quantity", in case of entry 239 the entire weight of the mixture / drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in the case of E. Micheal Raj (Supra) is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

8.3 At this stage, it is required to be noted that illicit drugs are seldom sold in a pure form. They are almost always adulterated or cut with other substance. Caffeine is mixed with heroin, it causes that heroin to vaporize at a lower rate. That could allow users to take the drug faster and get a big punch sooner. Aspirin, crushed tablets, they could have enough powder to amend reversal doses of drugs. Take example of heroin. It is known as powerful and illegal street drug and opiate derived from morphine. This drug can easily be "cut" with a variety of different substances. This means that drug dealer will add other drugs or non -intoxicating substances to the drug so that they can sell more of it at a lesser expense to themselves. Brown-sugar / smack is usually made available in power form. The substances is only about 20% heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous. These are only few examples to show and demonstrate that even mixture of narcotic drugs or psychotropic substance is more dangerous. Therefore, what is harmful or injurious is the entire mixture/tablets with neutral substance and Narcotic Drugs or Psychotropic Substances. Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated. There may be few punishment for "commercial quantity". Certainly that would not have been the intention of the legislature.

8.4. Even considering the definition of "manufacture", "manufactured drug" and the "preparation" conjointly, the total weight of such "manufactured drug" or "preparation", including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of NDPS Act would be achieved. Any other intention to defeat the object and purpose of enactment of NDPS Act viz. to Act is deterrent.

8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there

was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", cannot be accepted.

9. Now, so far as the challenge to the impugned Notification No.2942(E) dated 18.11.2009 issued by the Union of India, by which, "Note 4" has been added to the Notification S.O.1055(E) dated 19.10.2001 specifying small quantity and commercial quantity of the narcotic drugs and psychotropic substance covered under the NDPS Act, 1985 is concerned, as such it can be said to be clarificatory in nature and / or by way of ex abundanti cautela / abundant caution. As observed herein above, while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), it includes the weight of neutral substance (s) also and not only the actual content by weight of the offending drug. Therefore, even if "Note 4" which has been added vide Notification dated 18.11.2009 is not added, in that case also, it makes no difference and / or change. It appears that after the decision of this Court in the case of E. Micheal Raj (Supra) by way of abundant caution, the Union of India has come out with a Notification dated 18.11.2009 adding "Note 4". Thus, adding "Note 4" by Notification dated 18.11.2009 to the earlier Notification dated 19.10.2001 can be said to be clarificatory and by way of abundant caution only. Even otherwise, for the reasons stated above, the impugned Notification dated 18.11.2009 adding "Note 4" to the earlier Notification dated 19.10.2001, cannot be said to be contrary to the scheme and the various provisions of the NDPS Act.

9.1. At this stage, it is required to be noted that Notification dated 19.10.2001 was issued in exercise of powers conferred by clauses (viia) and (xxiiia) of Section 2 of NDPS Act. Section 2(viia) defines "commercial quantity" and Section 2(xxiiia) defines "small quantity" and it means any quantity greater or lesser than the quantity specified by the Central Government by Notification in the official gazette, as the case may be. Notification dated 19.10.2001 specifies the small quantity and commercial quantity with respect to respective narcotic drugs and psychotropic substances. As observed herein above, by abundant caution and to make it further clear "Note 4" has been added. Therefore, it cannot be said to be

ultra vires to Scheme and relevant provisions of the NDPS Act, as contended on behalf of the accused and intervener. Therefore, challenge to the impugned Notification dated 18.11.2009 adding "Note 5" of the clause to the Notification S.O.1055(E) dated 19.10.2001 fails.

10. In view of the above and for the reasons stated above, Reference is answered as under:

(I). The decision of this Court in the case of E. Micheal Raj (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV). Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

11. The Reference is answered accordingly. The Intervener Application stands disposed of. Now, respective Appeals be placed before the appropriate Court taking up such matters for deciding the appeals in accordance with law and on merits and in light of the observations made hereinabove and our answer to the Reference, as above.

Judgment Referred.

[1]*(2004) 4 SCC 0446*
[2]*(1976) 3 SCC 0684*
[3]*(2004) 3 SCC 0199*
[4]*(2015) 6 SCC 0477*
[5]*(1994) 3 SCC 0440*