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D. RAMAKRISHNAN

v.

INTELLIGENCE OFFICER NARCOTIC CONTROL BUREAU
(Criminal Appeal No. 1324 of 2009)

JULY 27, 2009

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[S.B. SINHA AND DEEPAK VERMA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 – s. 8 (c) r/w ss. 22, 23, 25, 27A, 53, 53A and 58 – Prosecution under – For unauthorised export of drugs – Conviction by courts below – Plea that conviction if at all could be under Drugs and Cosmetics Act and not under Narcotic Drugs Act – Held: Conviction under Narcotic Drugs Act was justified – The case does not fall within purview of Cosmetics Act – Drugs and Cosmetics Act, 1940.

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Appellant-accused No. 2 alongwith accused No. 1 was prosecuted and convicted by courts below u/s. 8(c) r/w ss. 22, 23, 25, 27A, 53, 53A and 58 of Narcotic Drugs and Psychotropic Substances Act, 1985. The allegation against the accused was that they unauthorisedly exported the drugs which find place at serial Nos. 30, 56 and 64 of the Schedule appended to the Act.

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In appeal to this court the plea of the appellant was that his offence could come under the Drugs and Cosmetics Act, 1940, but not under the Narcotic Drugs Act or the Rules framed thereunder.

Dismissing the appeal, the Court

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HELD: Appellant and his co-accused are said to have got licenses under the Drugs and Cosmetics Act, 1940. They had got general permission for import and export. Section 80 of Narcotic Drugs and Psychotropic Substances Act, 1985 provides that the provisions of the

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Act or the rules made thereunder are in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940 or the rules made thereunder. Drugs and Cosmetics Act, 1940 does not deal with exports. The provisions of Customs Act do. The licensees, therefore, were, thus, required to comply with the specific requirements of the Act and the Rules. It is not denied or disputed that the appellant neither applied for nor was granted any authority to export by the Narcotic Commissioner or any other Officer who is authorized in this behalf. [Paras 10 and 11] [447-D-G]

State of Uttarnachal v. Rajesh Kumar Gupta 2007 (1) SCC 355, distinguished.

Case Law Reference:

2007 (1) SCC 355 Distinguished. Para 3

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1324 of 2009.

From the Judgment & Order dated 12.2.2009 of the High Court of Judicature at Madras in Criminal Original Petition No. 28454 of 2008 in CC No. 100 of 2008.

K.T.S. Tulsi, Vikas Pahwa and Rishi Malhotra for the Appellants.

Mohan Jain, ASG, P.K. Dey, Shreekant N. Terdal for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. One Seethapathy (Accused No.1), since absconding, President of M/s Chandra Importers Inc., New York (for the sake of brevity, hereinafter referred to as, "the Company"), was indulging in illegal internet pharmacy business. It has a branch

A at Coimbatore. Appellant herein (Accused No.2) was managing the activities of the said branch. A search was made in the office of the accused and various documents and computers were seized. It is alleged that the appellant used to mail consolidated requirements by means of packing slips in the name of individual customers to the e-mail I.D. of the first accused. The first accused used to procure different drugs indicated by the appellant by the local pharmacy and pack separately as per packing slips and dispatch the same to the customers abroad through airmail and RMS post office at Coimbatore. The drugs procured and exported are Alprazolam, Lorazepam, Nitrazepam, etc. Indisputably, these drugs find place at Serial Nos. 30, 56 and 64 respectively of the Schedule appended to the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act")

D 3. Inter alia, on the premise that for export of the said drugs no permission from the Competent Authority was obtained, the appellant and his co-accused was prosecuted under Section 8(c) read with Section 22, 23, 25, 27A, 53, 53A and 58 of the Act.

E Primarily, relying on or on the basis of a decision of this Court in *State of Uttaranchal v. Rajesh Kumar Gupta* [(2007) 1 SCC 355], it was urged that the appellant and his co-accused might have committed an offence under the Drugs and Cosmetics Act, 1940 but not under the Act or the Rules framed thereunder. The learned Special Judge as also the High court, however, disagreeing with the said contention of the appellant herein rejected his application for bail.

G 4. Mr. K.T.S. Tulsi, learned Senior Counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in passing the impugned order insofar as it failed to take into consideration that all drugs being Schedule 'G' and 'H' drugs under the Drugs and Cosmetics Rules, 1945, export thereof would not attract the provisions of Rule 58 of the Narcotic Drugs and Psychotropic Substances

Rules, 1985 (for short, "the Rules") framed by the Central Government in exercise of the powers conferred upon it by Section 9 read with Section 76 of the Act. Mr. Tulsi furthermore contended that use of the drugs for medicinal purposes is acknowledged in terms of the proviso appended to Section 8(c) of the Act. In any event, he would content, Rules 53 and 64 of the Rules being genus, Rule 58 would be subject to Rule 53.

5. Mr. Mohan Jain, learned Additional Solicitor General appearing on behalf of the respondent, on the other hand, would contend that in terms of Rules 58 and 59 of the Rules, no export of any drug is permissible unless a permit is obtained for export thereof from the Competent Authority. It was urged that the minimum sentence for the offences committed for which the appellant has been charged being 10 years, this Court should not enlarge the appellant on bail.

6. The drugs in question are no doubt mentioned in Schedule 'G' and 'H' of the Drugs and Cosmetics Rules.

7. Section 2(xxiii) of the Act defines "psychotropic substance" to mean, 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. The drugs mentioned in the First Information Report ("FIR") find place at Serial Nos. 30, 56 and 64 of the Schedule appended to the Act. Chapter III of the Act provides for prohibition of certain operations. Clause (c) thereof mandates 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 transship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization.

A 8. Chapter VI of the Rules deals with import, export and transshipment of narcotic drugs and psychotropic substances. Rule 53 provides for general prohibition. Rule 58 provides that subject to rules 3 and 53A, no narcotic drugs, or psychotropic substances specified in the Schedule of the Act, shall be
B exported out of India without an export authorization in respect of the consignment issued by the issuing authority in Form No.5 appended to these therein. Rule 59 provides for issue of export authorization. Rule 63 provides for prohibition of import and export of consignments through a post office box,

C 9. In *Rajesh Kumar Gupta* (supra), this Court opined:

“19. It has not been brought to our notice that the 1985 Act provides for the manner and extent of possession of the contraband. The rules framed under Section 9 of the 1985
D Act read with Section 76 thereof, however, provide for both the manner and the extent, inter alia, of production, manufacture, possession, sale, purchase, transport, etc. of the contraband. Chapter VI of the 1985 Rules provides for import, export and trans-shipment of narcotic drugs and
E psychotropic substances. Rule 53 contains general prohibition in terms whereof the import and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I appended thereto is prohibited. Such prohibition, however, is subject to the other
F provisions of the said Chapter. Rule 63 to which our attention has been drawn specifically prohibits import and export of consignments through a post office box but keeping in view the general prohibition contained in Rule 53 the same must be held to apply only to those drugs and
G psychotropic substances which are mentioned in Schedule I of the Rules, and not under the 1985 Act. Similarly, Chapter VII provides for psychotropic substances. Rule 64 provides for general prohibition. Rules 53 and 64, thus, contain a genus and other provisions following the same
H under the said Chapter are species thereof. This we say

in view of the fact that whereas Rule 64 provides for
general prohibition in respect of sale, purchase, A
consumption or use of the psychotropic substances
specified in Schedule I, Rule 65 prohibits manufacture of
psychotropic substances, whereas Rule 66 prohibits B
possession, etc. of psychotropic substances and Rule 67
prohibits transport thereof. Rule 67-A provides for special
provisions for medical and scientific purposes.

20. The general prohibitions contained in both Rules 53
and 64, therefore, refer only to the drugs and psychotropic C
substances specified in Schedule I. It is neither in doubt
nor in dispute that whereas the Schedule appended to the
1985 Act contains the names of a large number of
psychotropic substances, Schedule I of the Rules
prescribes only 35 drugs and psychotropic substances."

10. Appellant and his co-accused are said to have got
licenses under the Drugs and Cosmetics Act, 1940. They had
got general permission for import and export. D

11. Section 80 of the Act provides that the provisions of
the Act or the rules made thereunder are in addition to, and not
in derogation of the Drugs and Cosmetics Act, 1940 or the rules
made thereunder. E

Drugs and Cosmetics At, 1940 does not deal with exports.
The provisions of Customs Act do. The licensees, therefore, F
were, thus, required to comply with the specific requirements
of the Act and the Rules. It is not denied or disputed that the
appellant neither applied for nor granted any authority to export
by the Narcotic Commissioner or any other Officer who is
authorized in this behalf. G

12. We, therefore, are of the opinion that the High Court
is right in opining that the decision of this Court in *Rajesh
Kumar Gupta* (supra) is not applicable to the facts of this case.

13. For the reasons aforementioned, there is no merit in- H

A the appeal. The appeal is dismissed accordingly. No costs.

14. However, the trial court may consider the desirability of concluding of the trial as early as possible. The observations made herein are only for the purpose of determining as to whether a prima facie case is made out against the appellant and the same may not be construed to be a finding on the guilt of the appellant or otherwise. The learned Special Judge shall determine the case pending before it in accordance with law and on its own merits.

C K.K.T.

Appeal dismissed.