

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

CRIMINAL REVISION No. 2068 of 2021

Between:-

**GOPAL KRISHNA GAUTAM @ PANDIT S/O SHRI
RAMSWAROOP GAUTAM, AGED 52 YEARS,
OCCUPATION -AGRICULTURIST R/O VILLAGE
KULAINTH, P.S. INDERGARH, DISTRICT DATIA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIJAY DUTT SHARMA- ADVOCATE)

AND

**UNION OF INDIA, CENTRAL BUREAU OF
NARCOTICS, THROUGH SH. ROHIT RAJ JI,
INSPECTOR AT THE OFFICE OF THE NARCOTICS
COMMISSIONER, 19 -MALL ROAD, MORAR,
DISTRICT GWALIOR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI PRAVEEN KUMAR NEWASKAR -DY. SOLICITOR

GENERAL OF INDIA)

Reserved on	:	16-08-2022
Delivered on	:	02-12-2022

ORDER

1. The present revision petition under Section 397 and 401 of Cr.P.C. is preferred by the petitioner for quashment of order dated 14-07-2021

whereby the charge for offence under Sections 8(b)/18(c) and 29 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as “the NDPS Act”) has been framed by the Special Judge (NDPS), Datia in Special Case No.9/2021 (NDPS). Said charge is framed in relation to FIR bearing No.2/2021 lodged at Police Station Central Bureau of Narcotics, Morar District Gwalior.

2. Case of prosecution as disclosed from the complaint filed by the respondent is that on 07-03-2021, the Narcotics Bureau received an information from their informer regarding illegal conveyance and cultivation of the opium poppy in the village Kulainth, Police Station Indergarh, district Datia by the persons namely Ranvir Singh alias Kapila, Lachchhiram, Ram Singh alias Baba, Naval Singh alias Kalli alias Neta. On the pretext of same, the said place of cultivation was raided by the special team constituted by the C.B.N. On the directions of Ranvir and Lachchhi, the team of C.B.N. reached the alleged place of incident where they found illegally cultivated opium poppy under the garb of other crops. Therefore, under the order of the gazetted officer, prepared two samples of the plants of opium poppy for analysis and destroyed the entire illegally cultivated opium poppy and apprehended the

accused persons namely Ranvir alias Kapila and Lachchhi alias Laxminarayan and kept the investigation pending.

3. Thereafter, Sh. Rohit Raj (Inspector, Central Narcotics Bureau, Gwalior Bench, Madhya Pradesh) received an information regarding survey No.87, on which, the alleged opium poppy as produce of cultivation was seized and on further investigation, it came to their knowledge that the said piece of land is possessed/owned by 26 different members and families. On further information, after examination of different persons of the said land and village, department came to know that the illegal opium was cultivated on the land of Munni Devi and the said land was given on lease (बटाई) to Gopal Krishan Gautam (present petitioner) in the month of October, 2020 for a year. On the basis of other incriminating materials as well as confessional statement of the petitioner/accused -Gopal Krishan Gautam rendered u/s 67 of the NDPS Act to the Investigating Officer, he has been implicated in the instant matter.
4. On the basis of above details and the facts situation as disclosed, Central Bureau of Narcotics (CBN) filed a complaint before the competent Court for the purpose of taking cognizance of the aforesaid offence against the present petitioner and other co-accused persons namely Ranvir Singh alias

Kapila and Lachchhi after concluding all the investigation in relation to these persons. Department also sought permission to investigate the matter further in relation to other persons arrayed in the matter.

5. Learned Special Judge took cognizance of the offence and thereby framed charge under Sections 8(b)/18(c) and 29 of the NDPS Act. Petitioner denied the charge and sought for trial.
6. Being aggrieved by the aforesaid impugned order by which charge has been framed, petitioner has preferred the instant revision seeking quashment of the order dated 14-07-2021 qua petitioner passed by the Court below.
7. It is the submission of learned counsel for the petitioner that petitioner has not committed any offence under Sections 8(b)/18(c) and 29 of the NDPS Act and in lieu of requisite evidence, material and documents available on record, trial would be a futile exercise. On 18-03-2021, CBN seized opium poppy allegedly cultivated over around 7,704 square meters wherein cultivation assumed to be 70 Kg., on the directions of Lachchhi and Ranvir Singh alias Kapila who were thereon implicated as accused in the instant matter. None of these persons disclosed name of present petitioner nor does the information rendered by the informer have disclosed the

name of present petitioner. Therefore, no allegation gains ground against the petitioner.

8. For the first time, after considerable period of one month from the alleged date of incident, in the statements of Nathuram and Mathura Prasad, name of petitioner surfaced with the allegations that petitioner took the said land on lease in the month of October, 2020 for a period of one year from Munni Devi for cultivation, where the opium poppy was seized but there is no evidence so as to suggest that petitioner himself took the cultivation of opium poppy and said land was in exclusive possession of the petitioner. According to learned counsel for the petitioner, seized land belongs to Munni Devi and there is no evidence on record so as to suggest that said land was given to the petitioner on lease (Batai) apart from a Panchnama signed by the adjoining land holders which is prepared on later date, purportedly for evading implication in the instant matter.
9. Evidence which purported to be given in respect of fact that the seized land was given on Batai to the petitioner is on the mere pretext of hearsay evidence which is evident from the statement of village residents and same cannot be admissible in the eyes of law.
10. Learned counsel for the petitioner while relying upon the judgment of

Tofan Singh Vs. State of Tamilnadu (2021) 14 SCC 1 submits that except his own confessional statement which was recorded under Section 67 of the NDPS Act, no iota of evidence exists. Merely on the suspicion that irrigation water system was owned by the petitioner and through that system petitioner used to irrigate most of the harvesting field, it cannot be taken to be proof.

11. It is further submitted that nothing incriminating has been seized from the possession of the petitioner to suggest his role in the crime. Continuation of the proceedings against the petitioner would amount to abuse of process of the Court.
12. While referring Sections 46 and 47 of the NDPS Act, petitioner submits that he does not fall either as land holder nor as officer who is required to give information of illegal cultivation to the police or any of the department mentioned in Section 42 of the NDPS Act. Therefore, he cannot be found to be a person who abetted offence as per Section 29 of the NDPS Act in any manner. He nowhere contravened any provision of the NDPS Act or Rules or Orders or any Condition of any licence, Permission or Authorization issued therein. Therefore, he is not liable to be punished for offence not only as per Section 8(b)/18(c) and 29 of the

NDPS Act but also under Section 32 of the NDPS Act. He neither abetted nor committed any offence so as to attract rigours of Section 8/18, 29 or Section 32 of the NDPS Act. Therefore, he prayed for quashing of charge.

13. *Per contra*, learned counsel for the respondent/CBN opposed the prayer and submitted that petitioner was found cultivating opium poppy over the land purportedly taken on lease/Batai. Since he was found in possession of opium poppy and water system for irrigation was also found to be in his name over the land in question, therefore, he was the person who was holding the land as per Section 46 of the NDPS Act. It was his duty to give immediate information regarding cultivation of opium poppy to concerned authorities because said cultivation was undertaken illegally without any sanction of law. Trial would unfold the truth and would demonstrate to what extent petitioner was involved. Respective role of the accused persons shall be revealed in trial. He also relied upon various provisions of the NDPS Act including Sections 8(a), 18, 29, 32, 46 and 47 and submitted that commission of offence is made out *prima facie*. He prayed for dismissal of revision petition.
14. Heard learned counsel for the parties at length and perused the documents available on record.

15. Here, petitioner is facing allegations of Sections 8(b), 18(c) and 29 of NDPS Act. All provisions are reproduced for ready reference:

8. Prohibition of certain operations.—No person shall

(a) xx xx xx

(b) **Cultivate the opium poppy or any cannabis plant;**
or

(c) xx xx xx

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

18. Punishment for contravention in relation to opium poppy and opium.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted

thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) xx xx xx

(b) xx xx xx

(c) *In any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.*

29. Punishment for abetment and criminal conspiracy-

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India;

or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

- 16.** Sections 46 and 47 of the NDPS Act cast duty upon the concerned officers and Sarpanch of the Panchayats therefore, these provisions are having material bearing in the matter and are reproduced as under:

“46. Duty of land holder to give information of illegal cultivation-

Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

47. Duty of certain officers to give information of illegal cultivation-

Every officer of the Government and every panch,

sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information, shall be liable to punishment.”

17. Section 46 of the NDPS Act prescribes essential ingredients to hold the land holder liable. In the conspectus of this concept, it is pertinent to highlight the meaning of the word land-holder. According to Black's Law Dictionary (10th Edition) by Bryan A. Garner, the word land holder means:

“Landholder (17c). Someone who possesses or owns land” at page 1010

To elaborate the same, a person who possess a land, is also categorised as a landholder and the word possess according to the Black's Law Dictionary means as follows:

Possess, vb.(14c) 1. To have in one's actual control; to have possession of at page 1351.

Thus, by observing the same, even the tenant, contractor, power of attorney holder or any other person who is having actual authority over a particular dominion despite not being the owner is also attracted with the corollary duty to disclose any illegal act being committed on the said dominion under the NDPS Act and mechanically the owner is not liable (he may or may not) for the said disclosure, if for any of the reasons, he is not coming under the category of landholder and for the time being is not exercising actual control over the property, which is in entirety a factual question to be considered on case -by -case basis. {Lawinsider, land holder definition, LAWINSIDER (Nov.06, 2021, 06:32 AM), <https://www.lawinsider.com/dictionary/land-holder>}.

More so, landholder is duty bound under the NDPS Act to disclose any illegal activity or cultivation prohibited by the said Act being committed on his land (being a landholder) and when he **knowingly neglects** (with an intent to hide or conceal the said activity, with or without receiving any benefit from such concealment) meaning thereby, intentionally concealing this fact from being disclosed to concerned authorities empowered under the Act, is liable for the punishment.

18. Section 47 of the NDPS Act prescribes essential ingredients to hold certain officers liable. The very difference between the yester-section and this section is that, every officer of the government and every Panch, Sarpanch

and other village officer of any description is duty bound to immediately furnish information of illegal cultivation as soon as it comes within their knowledge and thereby neglects (whether knowingly or unknowingly or intentional or accidental) to forward the same to the concerned authority.

19. The previous section bolstered that neglect should be knowingly or intentionally, but this section doubles the burden on the officers and allied persons, that it is not sine qua non to show that neglect was intentional so as to bring their omission punishable under this section, but what is required is only to show that they knew about the said thing and they neglected to furnish the information, for the reasons best known to them.
20. Furthermore, when the provisions enshrined under Section 46 and 47 of the NDPS Act are perused and applied at the touchstone of the presumptions laid down under the NDPS Act as echoed under Section 35 and 54 of the same, the true applicability and efficacy of these provisions can be achieved. This can be said because, to prove a mental element is sometimes very difficult and controversial and for this very purpose there came to be a hailing provision of **“reverse burden of proof/shift in burden of proof on the accused”**, which has the capacity to bring these positive offences based on omission of the duty to be invoked for nipping

the offences under the NDPS act in the bud itself. Now, Court shall discuss the punishment for which the said officers be liable for, because of the very reason, that section 46 & 47 of the NDPS Act, does not provide for any specific punishment in respect of violation of these provisions.

21. At this juncture, perusal to Section 32 of the NDPS Act is worth consideration, whose bare text is herewith reproduced:

“32. Punishment for offence for which no punishment is provided.—Whoever contravenes any provision of this Act or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”

Thus, the violation whilst neglecting in furnishing the information of illegal cultivation by land holder or any officer of the government etc. attracts the punishment for imprisonment for a term which may extend to six months, or with fine or with both. More so, the actions of illegal omission of the officers can also come within the ambit of abetting the commission of offencer under the NDPS Act, which is specifically dealt u/s. 29 of the NDPS Act.

22. Thus, to bring the actions of authorities under this section, it is to be proved that that abetment was made vide intentionally aiding the perpetrators by illegal omission, i.e. not furnishing immediate/timely information to the concerned officer about illegal cultivation, which forms one of the essential ingredients to constitute offence of abetment as defined u/s 107 of the Indian Penal Code which clearly applies to the NDPS Act by virtue of section 3 of the General Clauses Act, 1897 which goes on to state as follows:

“3. Definitions

In this Act, and in all Central Acts and regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context-

(1) “abet”, with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)”

An omission is nothing but inaction or not doing something. Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include “illegal omissions”. But mere moral omissions of not doing something would not complete the requirement of *actus reus*.

It can be understood by following example:

Illustration: A man is sinking in the swimming pool of a resort. A boy who is beside the pool does not make any attempt to save this man. This is a moral omission of not saving someone's life. The boy cannot be held criminally liable for such an omission.

But in the same scenario, if there is a lifeguard on duty at this resort, and if he does not make any attempt to save the man sinking in the pool, then he can be held criminally liable for such omission.

23. Furthermore, a similar provision to this effect has been provided under the M.P. Excise Act, 1915 which provides for the following:

*“50. Land-holders and others to give information—
Whenever any intoxicant is manufactured or collected, or any hemp plant is cultivated on any land in contravention of this Act—*

(a) any owner or occupier of such land and any agent of any such owner or occupier; and

(b) all village-headmen, village-accountants, village-watchmen, and all officers employed in the collection of revenue or rent of land on the part of the Government or the Court of Wards in the villages,

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or to an officer of the Excise, Police or Land Revenue Department, as soon as the fact comes to their knowledge.”

Though, this provision differs from the provision incorporated under NDPS Act in relation to that wherein section 50 does not provide for any punishment specifically in this section which the contravener be liable and therefore, for the punishment purposes, perusal is to be made on Section 37 of the M.P. Excise Act which provides for the following:

“37. Penalty for offence not otherwise provided for—
Whoever, is guilty of any act or intentional omission in contravention of any of the provisions of this Act or of any rule, notification or order made, issued or given thereunder and not otherwise provided for in this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.”

24. Petitioner has raised certain factual and legal questions involved in the matter while taking exception to framing of charge against him. Petitioner has raised the point regarding abetment as contained in Section 29 of the NDPS Act. So far as principle and scope of abetment is concerned, liability under Chapter V of IPC is based on the principle that many crimes would be impossible but for the support and encouragement received from others who, though not actively co-operating in the crime, prepare the ground and facilitate its commission. As such, the Code

penalizes all who may have lent their support and assistance in one form or the other to the commission of a crime.

25. The Indian Penal Code, contrary to the English law, makes no distinction between Principals in either the first or second degree. All those who are present at the scene and participate in the commission of a crime, are liable either as the actual offender under the specific sections of the Code, or under the provisions governing joint and constructive liability. The Indian Penal Code, however makes a broad distinction between a Principal and an Abettor, who correspond roughly to accessories before the fact. Such cases are dealt within Chapter V of the IPC under the caption '**Of Abetment**' from sections 107 to 120 of IPC. On the other hand, when the role played by an individual is that of an accessory after the fact, the Code provides for a substantive offence in such cases, like Section 52A harbouring, Section 130, 136, 157, 212, 216, 216A and 201 of IPC.
26. In **Gurubachan Singh Vs. Satpal Singh, AIR 1990 SC 209**, it was held that abetment not only related with the actual criminal act, but it is also a separate/distinct offence, for it abetted act must be an offence. Abetment means to help in doing something (usually bad) and it is defined under Section 107 of IPC. According to it, a person abets the doing a thing who

first; instigates any person to do that thing or, **secondly**; engages with one or more person or persons in any conspiracy for the doing of that thing; if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or **thirdly**; intentionally aids, by any act or illegal omission, the doing of that thing. So according to section 107 of IPC, abetment may be constituted: (I) by instigation; or (ii) by conspiracy; or (iii) by intentional aiding (aid may be given by act or by illegal omission).

27. In the light of the same, recently the Coordinate Bench of this Court at Principal Seat in the case of Virendra Singh Purviya Vs. State of Madhya Pradesh in M.Cr.C.No.9334/2019 vide judgment dated 7th January, 2020 came to be dealing with the similar issue of what “illegal omission” constitutes and observed as follows:

“Therefore, the issue that arises for consideration is whether thirdly of Section 107 IPC with Explanation 2 of Section 107 is attracted in the facts and circumstances of the present case. In order to convict a person of abetment by illegal omission, it is necessary to show that the accused intentionally aided the commission of offence by his non-interference and that the omission involved a breach of legal obligation. Abetment by omission would only be

punishable if the omission were an illegal omission. The word 'illegal' means against or not authorised by law and omission is something that has not been done either deliberately or accidentally.

There is nothing on record to show that failure of the applicant to prevent his brother co-accused Govind to commit rape upon prosecutrix (his wife) was against the law or the applicant was under an obligation by law to prevent such incident.

Although it is also alleged that after the first incident when prosecutrix told applicant Virendra Purvia about the incident on mobile, he asked her to allow co-accused Govind to do whatever he wanted whenever he came to her room, but neither in the case diary statement of prosecutrix nor in the FIR, it is mentioned that Prosecutrix allowed the co-accused Govind to make sexual intercourse with her against her will due to the pressure of the applicant. So in the considered opinion this Court the act of the applicant does not come within the expression 'illegal omission' also and accordingly he cannot be held liable for abetment of the offence. There is no allegation against the applicant that he threatened prosecutrix. So from the charge-sheet no offence under under Sections 376 (2)(n) & 376 (2)(f), 109, 506 & 34 of the IPC is made out against the present applicant Virendra Purvia.”

28. More so, the similar observations in respect of illegal omission becoming

part of abetment were dealt by this Court in the case of **Surendra Agnihotri Vs. State of M.P. (1998 Cr.L.J. 443)** whose observations is worth quoting:

“Plain reading of [Section 107](#) of the Indian Penal Code makes it clear that doing of a thing by illegal omission amount to abetment. Shri Dutt submits that there is no illegal omission on part of the appellant for the act of commission of suicide by the deceased, whereas according to the learned counsel for the State, it was the duty of the appellant to prevent the deceased from setting her on fire and after she has set herself on fire to put it off to save her. This leads to consideration what is meant by illegal omission.

14. The word 'illegal' means against or not authorised by law and omission is something that has not been done either deliberately or accidentally. Nothing has been pointed out on behalf of the respondent to show that the appellant's act of not making any endeavour to save life of the deceased is against law or the appellant was under an obligation by law to prevent such incident. Individuals act differently in same situation. It may be possible that the appellant seeing the flames got so shocked that he did not re-act or he might not have attempted to put off the fire apprehending danger of his life. I am of the opinion that

the act of the appellant does not come within the expression 'illegal omission' and accordingly he cannot be held guilty for abetment of the offence. As such the conviction and sentence of the appellant cannot be sustained."

- 29.** Though in the aforesaid matter, the offence alleged came to be quashed on the basis that there was no legal duty endowed upon the petitioner from omitting his brother to not commit rape on the prosecutrix (though it being moral and social duty to intervene), but the situation in the present matter is totally different, where there is a legal duty upon the landholder and the officer's to furnish information to the competent and concerned authority established under the NDPS Act in relation to illegal cultivation and therefore, they can also be held liable for abetment of the said crime, which may or may not have been committed. It is important to highlight that even preparation has also been brought into the category of offence.
- 30.** Here, in the present case whether the holding of land taken by the petitioner from Munni Devi and using his own irrigation system for cultivation of opium poppy to such a large extent (vast stretch of land), would be falling under instigation or conspiracy or by intentional aiding by his own act or by illegal omission by not informing the concerned

authority as required under Sections 46 and 47 of NDPS Act, would only be decided on the anvil of evidence led by the parties.

- 31.** Where there is legal duties cast upon the land-holder as well as over the officers to furnish information to the competent and concerned authority established under the NDPS Act in relation to illegal cultivation, then accused can also be held liable for abetment of the said crime, which may or may not have been committed. It is important to highlight that even preparation has also been brought into the category of offence.
- 32.** Therefore, it is clear that the provisions of Sections 46, 47, 29, 32, 8(b), 18(c) are to be seen in tandem. It is clear that if petitioner is found to be involved in abetment of the crime then independently also he can be punished for the offence even if other penal provision may or may not be attracted subsequently. Although at this stage, this Court refrains itself from expressing any opinion on the merits of the case so far as involvement of petitioner is concerned.
- 33.** As far as allegations in the present case is concerned, from perusal of the complaint filed by the respondent under Section 8(b)/18(c) and 29 of the NDPS Act, role of the petitioner is *prima facie* found to be of cultivation of opium poppy to a vast stretch of land where the statements of different

accused/witnesses were taken wherein petitioner's role was found to be of cultivation of the land over a part of Khasra No.87 at village Kulainth. Even the petitioner and his brother Ramsewak Gautam were found to be living over the said survey number in house. Irrigation work was alleged to be conducted over the land in question by the petitioner. Statements of witnesses and officers of the department make the case triable and cannot be interfered with at this stage.

34. According to learned counsel for the petitioner, some witnesses have been examined, therefore, it is in the interest of justice that petitioner may raise all his grounds and defence as per law before the trial Court only. Needless to say that trial Court shall take into consideration the evidence available on record as well as judgment of Apex Court in the case of **Tofan Singh** (supra).
35. Even otherwise, the scope of revision under Section 397 read with Section 401 of Cr.P.C. is very limited only to the extent of jurisdictional error, procedural irregularity or impropriety or perversity. It is only to be seen that whether *prima facie* ingredients of offence are available to take the petitioner for trial or not.
36. On cumulative analysis, it appears that petitioner has to face trial.

Accordingly, revision petition sans merits and is hereby **dismissed**.

37. Before parting, this Court while going through the provisions of Sections 46 and 47 of the NDPS Act found that these provisions are made by the Legislature to take care of growing menace of cultivation of opium poppy and other psychotropic substances by placing responsibility/legal duty over Sarpanch and other revenue/local authorities, therefore, it is imperative that all concerned officers and Sarpanchs of Panchayats must be aware of the provisions and its resultant effect. It is the duty of the respondent CBN/NCB and other enforcement agencies that they must take care of these provisions coupled with Sections 29 and 32 of NDPS Act.
38. Therefore, it is the duty of enforcement agencies like CBN, NCB, regular Police Authorities and other Investigating Agencies which may be involved in investigation of such type of cases falling under the NDPS Act to investigate the **role of Sarpanchs, Holder of Land and Other Local/Revenue Authorities** because without their knowledge, cultivation of opium poppy and other psychotropic substances would not be possible *prima facie* in the land falling under their jurisdiction. At times they may be ignorant and at times their voice may be suppressed by criminal nexus but their respective roles are required to be investigated when such type of

offences related to cultivation of opium poppy come to the knowledge of investigating agencies. It is all the more important because Panchayati Raj System is given Constitutional Status by the Constitutional Amendment (The Constitution 73rd Amendment Act, 1992) in Article 243 of the Constitution of India. Responsibilities follow the Privileges. Incidentally, the NDPS Act imposes Statutory Duties also over these authorities beside Constitutional and Democratic duties and omission of duties lead to penal liability. Therefore, concerned office-holders (Sarpanchs etc.), local/revenue authorities are required to be sensitized in this regard so that they may be sensitized for their duties and result of the omission.

- 39.** Therefore, this Court deems it fit to suggest the Central Government and State Government (State of Madhya Pradesh) to hold awareness and sensitization programs for Sarpanchs of the Panchayats and other representatives of Local Self Government as well as for Revenue Authorities to make them aware about the duty cast upon them under Sections 46 and 47 of the NDPS Act for giving information to the concerned authority if any illegal opium poppy cultivation is going on in their area of jurisdiction. Omission to the same may adversely affect them for legal consequences, therefore, sensitization is required.

40. Central Government/State Government (State of Madhya Pradesh) are further directed to apprise the said stakeholders about the consequences including penal liability of such omissions so that provisions which are incorporated in statute may be effectively pressed into service for preventing the illegal cultivation of opium poppy and other psychotropic substances. CBN/NCB etc. are required to investigate as per Sections 46 and 47 of the NDPS Act also. It will also act as deterrent for officers who are otherwise casual and negligent towards their statutory duties. They have to be apprised about their duties and consequences of penal liability in case of omission.
41. Copy of this order be sent to the Secretary of Home, Finance and Panchayat Raj Department of the Central as well as State Government and Director Generals of CBN and NCB and of Police Department of M.P., Bhopal, for necessary information, compliance and for undertaking sensitization programmes.
42. Revision petition stands **dismissed accordingly.**

(Anand Pathak)
Judge