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BENCHATINDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRRNo.704/2015

Govind S/o Gopalkrishna Patidar

Vs.

State of MP

Shri Vikas Jain, learned counsel for the applicant.
Ms. Mini Ravindran, learned counsel for the respondent/State

JUDGMENT

(Delivered on this 27th day of July, 2015)

This Criminal Revision is directed against the order passed by learned Additional Special Judge under NDPS Act, Mandsaur in Special Sessions Trial No.07/2015 dated 07.04.2015 wherein, learned Additional Special Judge framed charges under section 8(c) r/w 21 (b) against the present applicant.

The facts giving rise to this revision filed under section

397 read with section 401 of Cr.P.C. are that present applicant is facing trial before Additional Sessions Judge in aforementioned Special Sessions Trial. As per the prosecution story, 50 gms of contraband Smack was found in his possession. The contraband seized from possession of the present applicant was sent for examination to Forensic Science Laboratory, Rau, District – Indore. As per the report which is annexed by the present applicant as Annexure P-3, the substance seized from possession of the present applicant was found to be Diazepam and not Diacetylmorphine.

Learned counsel for the applicant submits that the report of FSL can be read without any oral evidence and therefore, at this stage only, it can be inferred finally that the substance seized from possession of the present applicant is not Smack but Diazepam. He further submits that Diazepam is psychotropic substance and not a narcotic drug and it is shown in entry at Serial no.43 of Schedule appended to the Act which shows psychotropic substance under Clause (xxiii)

of section 2 of the Act.

Clause (xxiii) of section 2 reads as under:-

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

The Schedule appended to the Act shows that Diazepam is a psychotropic substance and possessing psychotropic substance is punishable under section 22 of the NDPS Act and not under section 21 of the NDPS Act which provides punishment for possessing manufactured drugs and preparation.

In this matter, quantity of Diazepam is 50 gms which is less than commercial quantity and more than small quantity, therefore, section 22 (b) shall be attracted.

In this view of the matter, learned Special Judge erred while framing charges under section 8 read with section 21 of

NDPS Act. Therefore, the revision deserves to be allowed and the impugned order is liable to be set aside.

Accordingly, the revision is allowed and the impugned order is set aside. The matter is remanded back to the trial Judge for consideration afresh in light of appropriate provisions of law.

With this observation and direction, the revision stands disposed of.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-