

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 660 OF 2007**

Union of India & Another ...Appellants

*Versus*

Sanjeev V. Deshpande ...Respondent

**WITH**

**CRIMINAL APPEAL NO. 848 OF 2011**

**CRIMINAL APPEAL NO. 855 OF 2011**

**CRIMINAL APPEAL NO. 876 OF 2011**

**CRIMINAL APPEAL NO.1711 OF 2014**  
**(Arising out of SLP (Crl.) No. 2694 of 2006)**

**CRIMINAL APPEAL NO.1713 OF 2014**  
**(Arising out of SLP (Crl.) No. 5714 of 2006)**

**CRIMINAL APPEAL NO.1710 OF 2014**  
**(Arising out of SLP (Crl.) No. 4241 of 2009)**

**CRIMINAL APPEAL NO.1712 OF 2014**  
**(Arising out of SLP (Crl.) No. 6743 of 2009)**

**CRIMINAL APPEAL NO.1714 OF 2014**  
**(Arising out of SLP (Crl.) No. 3000 of 2012)**

**CRIMINAL APPEAL NO.1715 OF 2014**  
**(Arising out of SLP (Crl.) No. 9114 of 2012)**

**CRIMINAL APPEAL NO.1716 OF 2014**  
**(Arising out of SLP(Crl.) No. 9374 of 2012)**

**CRIMINAL APPEAL NO.1717 OF 2014**  
**(Arising out of SLP(Crl.) No. 3558 of 2013)**

**J U D G M E N T**

**Chelameswar, J.**

1. Leave granted in the special leave petitions.
2. This batch of matters is listed pursuant to various orders of this Court opining that these matters are required to be considered by a larger Bench.
3. The first of such orders is dated 20<sup>th</sup> April, 2007 made in Criminal Appeal No.644 of 2007. By the said order, leave was granted in SLP (Crl.) No.4976 of 2006. The order reads as follows:-

“Our attention has been invited by the learned counsel to two decisions of this Court; namely, a decision of 3-Judge Bench in Collector of Customs, New Delhi vs. Ahmadalieva Nodira (2004) 3 SCC 549 and subsequent decision of 2-Judge Bench in State of Uttaranchal vs. Rajesh Kuamr Gupta (2007) 1 SCC 355.

Reference was also made of Section 80 of the Narcotic Drugs and Psychotropic Substances Act, 1985 which reads as under:

“80. Application of the Drugs and Cosmetics Act, 1940 not barred. – The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

In our opinion, in view of the fact that the effect of Section 80 requires to be considered, we grant leave and direct the Registry to place the papers before the Hon’ble the Chief Justice for placing the matter before a 3-Judge Bench.

4. Each of the remaining matters came to be tagged on to Criminal Appeal No. 644 of 2007 on the ground that the issue involved in each of these cases is identical with the issue involved in Criminal Appeal No. 644 of 2007.

5. All these cases pertain to prosecution under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”). Each one of the accused is alleged to be in possession of some psychotropic substance mentioned in the Schedule to the Act. Eventually, the question is whether persons accused of committing an offence under the Act could be enlarged on bail in view of the stipulations contained under Section 37 of the Act. In some of these cases, bail was granted by the concerned High Court and in some cases, bail was rejected.

Aggrieved by such orders, either the State or the accused preferred these appeals.

6. Section 37<sup>1</sup> of the Act stipulates that all the offences punishable under the Act shall be cognizable. It further stipulates that:—

- (1) persons accused of an offence under Section 19, 24, 27A or persons accused of offences involved in “commercial quantity”<sup>2</sup> shall not be released on bail, unless the public prosecutor is given an opportunity to oppose the application for bail; and

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<sup>1</sup> Section 37 - Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

<sup>2</sup> Section 2(viia): “ Commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity grater than the quantity specified by the Central Government by notification in the Official Gazette.

(2) more importantly that unless “the Court is satisfied that there are reasonable grounds for believing” that the accused is not guilty of such an offence. Further, the Court is also required to be satisfied that such a person is not likely to commit any offence while on bail.

In other words, Section 37 departs from the long established principle of presumption of innocence in favour of an accused person until proved otherwise.

7. To understand the exact legal quandary involved in these matters, a brief survey of the relevant provisions of the Act and also an understanding of the scheme of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as “the 1940 Act”) is necessary.

8. Prior to the Act, three colonial enactments to some extent dealt with the legislative subject matter of the Act. They are Opium Act, 1857, The Opium Act, 1878 and the Dangerous Drugs Act, 1930. Subsequently, various

international treaties and protocols etc. dealing with the menace of narcotic drugs and psychotropic substances came into existence. India has been a party to those treaties and protocols etc. and incurred several legal obligations thereunder. Parliament opined that the existing enactments were inadequate to handle the hazard projected by the narcotic drugs and psychotropic substances, apart from the inadequacy of the existing law to enable India to comply with its international legal obligations. Hence, the Act and all the three old Acts were repealed.

9. The Act deals with narcotic drugs and psychotropic substances. Both the expressions are defined under the Act. Section 2(xiv) defines “narcotic drug” as follows:-

““narcotic drug” means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods;”

10. The words “coca leaf”, “cannabis”, “opium”, and “poppy straw” occurring in the definition of narcotic drug are themselves defined under Sections 2 (vi), 2(iii), 2(xv) and 2(xviii) respectively.

11. Section 8 prohibits the cultivation by any person of any coca plant, opium poppy or cannabis plant and also prohibits the gathering of any portion of coca plant. It further stipulates that “no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume” or indulge in either inter-state trade or international trade (all these prohibited activities hereinafter collectively referred to as “DEALING IN”) of any narcotic drug or psychotropic substance. Section 8 itself contains certain exceptions to the general prohibition as described above.<sup>3</sup> The details would be examined later.

12. Sections 9 and 10 authorise the Central Government and the concerned State Governments to make Rules

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<sup>3</sup> **Section 8. Prohibition of certain operations.** -No person shall –

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) 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,

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:

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:

permitting and regulating the various aspects of prohibition contained under Section 8.

13. Chapter IV of the Act contains various offences and the punishments for the said offences.

14. Since all the cases on hand are cases of prosecution for some contravention of the Act in relation to psychotropic substances, Sections 22 to 24 are relevant for our enquiry.

15. Section 22<sup>4</sup> prescribes the punishments for the violation of various activities prohibited under Section 8(c). Depending upon the quantity of the psychotropic substance involved in the case, the punishment prescribed also varies.

If the quantity is small, the punishment extends upto 6

<sup>4</sup> **22. Punishment for contravention in relation to psychotropic substances.** -Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter- State, exports inter-State, or uses any psychotropic substance shall be punishable, -

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

months. The expression “small quantity” is defined under Section 2(xxiii a)<sup>5</sup>. If the quantity is less than “commercial quantity” as defined under Section 2(viia), but greater than the small quantity, the punishment may extend upto 10 years of rigorous imprisonment apart from fine. When the quantity exceeds the commercial quantity, the punishment extends upto 20 years and carries a fine upto 2 lakhs and for special reasons even more. Section 23<sup>6</sup> prescribes the punishment for illegal import to India or export out of India of narcotic drugs and psychotropic substance. Once again, the punishment varies depending upon the quantity of the

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<sup>5</sup> Section 2 (xxiii a): “small quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette.

<sup>6</sup> Section 23. Punishment for illegal import in to India, export from India or transshipment of narcotic drugs and psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishment,—

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine; which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

contraband involved in the offence. Examination of the scope of Section 24 is not necessary in the context of the factual setting of the cases at hand.

16. Section 35 stipulates that in any prosecution for an offence under the Act which requires a culpable mental state of the accused, the court trying offence is mandated to assume the existence of such mental state, though it is open for the accused to prove that he had no such mental state.<sup>7</sup>

17. The ambit and scope of section 37 was considered by this court in two earlier decisions in ***Union of India v. Thamisharasi***, (1995) 4 SCC 190 and ***Collector of Customs, New Delhi v. Ahmadalieva Nodira***, (2004) 3 SCC 549. The latter of the two judgments after taking note of the earlier decision explained the context of section 37 as follows:

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<sup>7</sup> **Section 35. Presumption of culpable mental state.**-(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

*Explanation.*-In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

“6. As observed by this Court in *Union of India v. Thamisharasi* clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence...”

18. Various sets of Rules were framed by the Government of India in exercise of the power conferred under Sections 9 and 76 of the Act. Relevant for the purpose of our enquiry is the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as “the 1985 Rules”). Various Chapters and Rules provide for various aspects of the control and regulation of DEALING IN narcotic drugs and psychotropic substances. The subject matter of Chapter III

of the Rules is opium poppy cultivation and production of opium and poppy straw, Chapter IV manufacture, sale and export of opium, Chapter V manufactured drugs<sup>8</sup>, Chapter VI import, export and transshipment of narcotic drugs and psychotropic substances into or out of India. Rule 53 thereof prohibits both import and export into or out of India of narcotic drugs and psychotropic substances specified in Schedule I to the Rules, subject of course to the provisions of Chapter VIIA. Rule 53A prohibits export of the narcotic drug or psychotropic substance etc. specified in Schedule-II to the Rules to certain countries or to the regions specified in the Schedule. The further details of the chapter are not necessary for our purpose.

19. The subject matter of Chapter VII is psychotropic substances. Rule 64 prohibits each of the activities specified

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<sup>8</sup> 2(xi): “manufactured drug” means—

- (a) all coca derivatives medicinal cannabis, opium derivatives and poppy straw concentrate;
- (b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug.

under Section 8(c) of the Act, DEALING IN all the psychotropic substances specified in Schedule-I of the Rules.

#### Rule 64 -

“No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule-I.”

In other words, Rule 64 reiterates the prohibition contained under Section 8(c) of the Act, w.r.t. some of the psychotropic substances mentioned in Schedule-I to the Act.

20. Whereas Rule 65 stipulates that with reference to the psychotropic substances other than those specified in Schedule-I to the Rules could be manufactured subject to the limitation specified under Rule 65. In other words, notwithstanding the prohibition under Section 8(c), the Central Government in exercise of its power under Section 9(1)(a)(vi) permits the manufacture of those psychotropic substances other than specified in Schedule-I to the Rules.

#### Rule 65A stipulates that-

“No person shall possess sell, purchase, consume or use any psychotropic substance except in accordance with the Drugs and Cosmetics Rules, 1945”.

Obviously, the said Rule has application only to the psychotropic substances other than those specified in Schedule-I of the Rules.

Rule 66 mandates that-

**“no person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, **unless he is lawfully authorized to possess such substance for any of the said purposes under these rules.**”**

The reference to the 1945 Rules admittedly is to the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as “1945 Rules”) framed under the Drugs and Cosmetics Act, 1940.

21. It is submitted by Ms. Pinky Anand, learned Additional Solicitor General that the High Court of Bombay following two earlier decisions, (one of the Delhi High Court and another of the High Court of Punjab & Haryana), in its judgment, which is impugned in Special Leave Petition No.5714 of 2006, held thus:

**“38. So given, as far as psychotropic substances is the present case are concerned, operations pertaining to them are permitted because Schedule I to the Rules do not include them at all. That these substances are included in the schedule to the act is not of any relevance because**

one has to see everything viz., the Act, the Rules and Order made thereunder together and in a harmonious manner. It is well settled that the psychotropic substance is included in the Schedule to the Act but it is not included in the Schedule I to the Rules, then operations covered by Section 8 cannot be said to be contravening provisions of the Act and, therefore, punishable. That is how, these provisions have been interpreted by Delhi High Court and earlier by Punjab and Haryana High Court. Their views have my respectful concurrence.”

The learned ASG submitted that such a conclusion is wholly unwarranted on the face of clear language of Section 8(c) of the Act.

22. Shri K.T.S. Tulsi, learned senior counsel appearing for some of the accused in this batch of matters submitted that possession of psychotropic substance pursuant to some authorisation under the 1940 Act or Rules made thereunder coupled with the absence of mention of a particular psychotropic substance (found in the possession of an accused) in Schedule-I to the Rules framed under the Act excludes the application of the Act.

23. It is in the background of the above submissions, the legality of the conclusion recorded by the Bombay High Court that the absence of mention of a particular

psychotropic substance in Schedule-I to the Rules excludes the application of Section 8, notwithstanding the fact that such a drug is included in the Schedule to the Act, is required to be decided.

24. Before we examine the correctness of various submissions, we deem it appropriate to analyze and find out the true scope and ambit of section 8(c). Section 8(c) in no uncertain terms prohibits the DEALING IN any manner in any narcotic drug or psychotropic substance. However, an exception to such prohibition is also contained in the said Section.

**“Section 8. Prohibition of certain operations** – No person shall –

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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 authorisation also in accordance with the terms and conditions of such licence, permit or authorisation;”

The exception being that DEALING IN any narcotic drug or psychotropic substance is permitted **“in the manner and to the extent provided by the provisions of**

**this Act or the rules or orders made thereunder”.**

25. In other words, DEALING IN narcotic drugs and psychotropic substances is permissible only when such DEALING is for medical purposes or scientific purposes. Further, the mere fact that the DEALING IN narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under section 8(c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder. Sections 9<sup>9</sup> and 10<sup>10</sup> enable the Central and the State Governments respectively to make rules **permitting** and **regulating** various aspects (contemplated

<sup>9</sup> Section 9. Power of Central Government to permit, control and regulate.—(1) Subject to the provisions of section 8, the Central Government may, by rules—

- |      |                                                                                                                                               |   |   |   |   |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|
| (a)  | permit and regulate—                                                                                                                          |   |   |   |   |
|      | (i) to (v)                                                                                                                                    | x | x | x | x |
| (iv) | the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances; |   |   |   |   |
|      |                                                                                                                                               | x | x | x | x |

<sup>10</sup> Section 10. Power of State Government to permit, control and regulate.—(1) Subject to the provisions of section 8, the State Government may, by rules—

- |     |                      |   |   |   |   |
|-----|----------------------|---|---|---|---|
| (a) | permit and regulate— |   |   |   |   |
|     |                      | x | x | x | x |

under Section 8(c), of DEALING IN narcotic drugs and psychotropic substances.

26. The Act does not contemplate framing of rules for prohibiting the various activities of DEALING IN narcotic drugs and psychotropic substances. Such prohibition is already contained in Section 8(c). It only contemplates of the framing of Rules for permitting and regulating any activity of DEALING IN narcotic drugs or psychotropic substances.

27. Therefore, we are of the opinion that the conclusion reached by the various High Courts that prohibition contained under Section 8 is not attracted in respect to all those psychotropic substances which find a mention in the Schedule to the Act but not in Schedule-I to the Rules framed under the Act is untenable.

28. However, it is brought to our notice that conclusion such as the one reached by the various High Courts as noted above is supported by a judgment of this Court in **Rajesh Kumar Gupta** (supra). At para 19, it was held;

“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 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 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 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 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 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, consumption or use of the psychotropic substances specified in Schedule I, Rule 65 prohibits manufacture of psychotropic substances, whereas Rule 66 prohibits possession, etc. of psychotropic substances and Rule 67 prohibits transport thereof. Rule 67-A provides for special provisions for medical and scientific purposes.”

(emphasis supplied)

29. We are unable to agree with the conclusion (reached in **Rajesh Kumar Gupta's case**) that the prohibition contained in Rule 63<sup>11</sup> of the 1985 Rules is applicable only to those narcotic drugs and psychotropic substances which are mentioned in Schedule-I to the Rules and not to the

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<sup>11</sup> 63. Prohibition of import and export of consignments through a post office box, etc. – The import or export of consignments of any narcotic drug or psychotropic substance through a post office box or through a bank is prohibited.

psychotropic substances enumerated in the Schedule to the Act. Such a conclusion was reached in **Rajesh Kumar Gupta's case** on the understanding that Rule 53 (prohibiting the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule-I to the Rules) is the source of the authority for such prohibition. Such a conclusion was drawn from the fact that the other Rules contained in the Chapter permit import into and export out of India of certain narcotic drugs and psychotropic substances other than those specified in Schedule-I to the Rules. Unfortunately, the learned Judges in reaching such a conclusion ignored the mandate of Section 8(c) which *inter alia* prohibits in absolute terms import into and export out of India of any narcotic drug and psychotropic substance. Rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act.

30. On examination of the scheme of Rules 53 to 63 which appear in Chapter VI, we are of the opinion that Rule 53<sup>12</sup>

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<sup>12</sup> **53. General prohibition** – Subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I is prohibited.

reiterates an aspect of the larger prohibition contained in Section 8(c) i.e., the prohibition of import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule-I to the Rules. The proviso thereto however enables the import into and export out of India on the basis of an import certificate or export authorisation issued under the provisions of Chapter VI. The subsequent Rules stipulate the conditions subject to which and the procedure to be followed by which some of the narcotic drugs and psychotropic substances could be imported into India or exported out of India. For example, opium is a narcotic drug by definition under Section 2(xiv) of the Act whose export and import is prohibited under Section 8(c). But Rule 54<sup>13</sup> authorizes the import of opium by Government opium factory. The construction such as the one placed on

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Provided that nothing in this rule shall apply in case the drug substance is imported into or exported out of India subject to an import certificate or export authorisation issued under the provision of this Chapter and for the purpose mentioned in Chapter VIIA.

<sup>13</sup> **54. Import of opium, etc. – The import of –**

- (i) opium, concentrate of poppy straw, and
- (ii) morphine, codeine, thebaine, and their salts is prohibited save by the Government Opium Factory;

Provided that nothing in this rule shall apply to import of morphine, codeine, thebaine and their salts by manufacturers notified by the Government, for use in manufacture of products to be exported or to imports of small quantities of morphine, codeine and thebaine and their salts not exceeding a total of 1 kilogram during a calendar year for analytical purposes by an importer, after following the procedure under rule 55 and subject to such conditions as may be specified in the import certificate issued in Form No. 4A.

Rule 53 in **Rajesh Kumar Gupta's case** would in our opinion be wholly against the settled canons of statutory interpretation that the subordinate legislation cannot make stipulation contrary to the parent Act.

31. Chapter VII deals with psychotropic substances. No doubt Rule 64<sup>14</sup> once again purports to prohibit various operations other than import into or export out of India in **psychotropic substances** specified in Schedule-I for the obvious reason that import and export operations are already covered by Rule 53. Rule 65 authorizes the manufacture of psychotropic substances other than those specified in Schedule-I to the Rules subject to and in accordance with the conditions of a licence granted under the 1945 Rules. The rule also provides for various other incidental matters. Rule 65A prohibits the sale, purchase, consumption or use of any psychotropic substances except in accordance with the 1945 Rules.

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<sup>14</sup> Rule 64. General Prohibition.—No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Schedule-I.

32. Rule 66 prohibits any person from having in possession any psychotropic substance **even** for any of the purposes authorized under the 1945 Rules **unless** the person in possession of such a psychotropic substance is lawfully authorized to possess such substance for any of the purposes mentioned under the 1985 Rules. Persons who are authorized under the 1985 Rules, and the quantities of the material such persons are authorized to possess, are specified under Rule 66(2). They are-

- (1) any research institution or a hospital or dispensary maintained or supported by Government etc. – Rule 66(2).
- (2) individuals where such possession is needed for personal medical use subject of course to the limits and conditions specified – the two provisos to Rule 66(2).

33. Rule 66 reads as follows —

Rule 66. Possession, etc., of psychotropic substances.—(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorized to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorized under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time:

Provided further than an individual may possess the quantity of exceeding one hundred dosage units at a time but not exceeding three hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.

34. On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of DEALING IN psychotropic substances and the conditions subject to which such DEALING IN is permitted. We are of the opinion that both

Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. **Rajesh Kumar Gupta's case** in our view is wrongly decided.

35. In view of our conclusion, the complete analysis of the implications of Section 80<sup>15</sup> of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further

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<sup>15</sup> Section 80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

the provisions of the Act operate in addition to the provisions of 1940 Act.

36. In the light of our above conclusion the correctness of the orders impugned in all the Criminal Appeals is normally required to be considered by the Bench of appropriate strength. However, in view of the fact that most of these matters are old matters [pertaining to years 2006 to 2013], we deem it appropriate to remit all these matters to the concerned High Courts for passing of appropriate orders in the light of this judgment.

37. Ordered accordingly. Appeals stand disposed of.

JUDGMENT

.....CJI.  
**(R.M. Lodha)**

.....J.  
**(J. Chelameswar)**

.....J.  
**(A.K. Sikri)**

**New Delhi;  
August 12, 2014**