

News



The bench comprising Justices JB Pardiwala and Manoj Misra heard the case where the Respondent-accused was found in possession of Buprenorphine Hydrochloride, a psychotropic substance listed in the NDPS Act's Schedule but not in Schedule I of the NDPS Rules; however, the charges framed against him under the NDPS Act were deleted, invoking powers under Section 216 CrPC despite the provision not empowering the court to do so.

The trial court deleted the charges against the Respondent relying on the State of Uttaranchal v. Rajesh Kumar Gupta, (2007) 1 SCC 355 judgment, which held that substances not listed in the NDPS Rules (Schedule I) but listed in the NDPS Act Schedule cannot be prosecuted under the NDPS Act.

Aggrieved by the High Court's approval of the trial court's decision prompted the Department of Revenue Intelligence approached the Supreme Court.

The key issue for the Court's consideration was "whether the production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import inter-State, export inter-State, import into India, export from India or transshipment of a psychotropic substance which is listed under the Schedule to the NDPS Act but not mentioned under Schedule I of the NDPS Rules would constitute an offence under Section 8(c) of the NDPS Act?"

Answering in the affirmative, the judgment authored by Justice Pardiwala observed that the impugned ruling failed to take into account the judgment of the Union of India & Anr. Vs. Sanjeev V. Deshpande, 2014 13 SCC 1, where the Court overruled Rajesh Kumar Gupta's judgment holding that all substances in the NDPS Schedule are prosecutable under the NDPS Act, regardless of their omission in the Rules.

the court said,

it cannot be said that the dealing in of "Buprenorphine Hydrochloride" would not amount to an offence under Section 8 of the NDPS Act owing to the fact that the said psychotropic substance only finds mention under the Schedule to the NDPS Act and is not listed under Schedule I of the NDPS Rules.

The Court said that for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, "it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any, required under the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder."

In terms of the aforesaid, the Court allowed the appeal, holding that Buprenorphine Hydrochloride, being a psychotropic substance listed in the NDPS Act's Schedule, falls under the Act's purview. and noted that the activities involving this substance without proper authorization constitute an offense under Section 8(c) of the NDPS Act, even if the substance

is not listed in Schedule I of the NDPS Rules.

The Court set aside the High Court's decision and reinstated the charges under the NDPS Act against the Respondent-accused.

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