**REPORTABLE**

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

**CRIMINAL APPEAL NO. 956 OF 2012**

**STATE OF HIMACHAL PRADESH ...APPELLANT(S)**

**VERSUS**

**NIRMAL KAUR @ NIMMO AND OTHERS ...RESPONDENT(S)**

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

**B.R. GAVAI, J.**

**1.** A coordinate Bench of this Court, vide order dated 14th August 2018, has framed the following questions for consideration:

(i) Whether it is necessary to particularize the species of the contraband recovered – poppy husk, poppy straw etc.?

(ii) So long as the prosecution proves that what was recovered was the sample of poppy straw and whether it is necessary for the prosecution to bring in materials

to show as to what was the species of the contraband recovered?"

**2.** Since the answer to the aforesaid questions have a bearing on a number of cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "1985 Act"), this Court, vide its order dated 14th August 2018, had requested Shri P.S. Narasimha, learned Senior Counsel (as he then was) to assist the court as *amicus curiae*. Shri K. Parameshwar, learned counsel was requested to assist Shri P.S. Narasimha. On the elevation of Hon'ble Mr. Justice P.S. Narasimha, Shri Parameshwar continued to assist this Court as *amicus curiae*.

**Factual Background:**

**3.** On 25th July 2003, when Sarbjeet Singh (PW-12) along with some other police officials were on patrolling duty at Haroli in Una District, he was informed by Constable Upnesh Kumar (PW-1) that the respondent-accused was indulging in the illicit trading of 'poppy straw' and that she had kept huge quantity of 'poppy straw' in the room where fodder for the cattle had been stacked.

**4.** After complying with the formalities as prescribed under the 1985 Act, a raiding party was formed and the premises of the respondent was searched. During the search, a bag containing 20 Kgs. of 'poppy husk' was found in the room meant for stacking fodder. Two samples each weighing 250 grams were separated and sealed. The respondent was arrested. While in police custody, the respondent made a disclosure statement that she had concealed nine more gunny bags of 'poppy husk' on the side of *khad* near Gurudwara Girgirga Sahib. Accordingly, eight gunny bags each containing 40 Kgs. of 'poppy husk' and one bag containing 30 Kgs. of 'poppy husk' were recovered. From each of these nine bags, two samples, each weighing 250 grams, were separated and sealed in separate parcels.

**5.** The samples were sent to the Chemical Examiner, who opined that the samples contained contents of 'poppy husk'. After completion of the investigation, the respondent was charged with the offence punishable under Section 15(c) of the 1985 Act for possessing commercial quantity of 'poppy straw'. The respondent pleaded not guilty and claimed to be tried. At the conclusion of the trial, the trial court found the

respondent guilty and convicted and sentenced her to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, and, in default of payment of fine, to undergo rigorous imprisonment for a further period of two years.

**6.** The respondent filed an appeal being Criminal Appeal No. 525 of 2004 before the High Court. During the course of hearing, the High Court was of the opinion that the tests conducted by the Chemical Examiner to ascertain whether 'meconic acid' and 'morphine' were present in the sample stuff, were not enough to reach the conclusion that the stuff was, in fact, 'poppy straw'. Therefore, the High Court summoned the Chemical Examiner as a court witness. The High Court came to a conclusion that the two tests conducted by the Chemical Examiner to ascertain whether the samples contained 'meconic acid' and 'morphine' did not indicate that the stuff examined consisted of the parts of either the plant of the species of the 'papaver somniferum L' or a plant of any other pieces of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' can be extracted and which the Central Government had notified to be 'opium

poppy' for the purposes of the 1985 Act. The High Court therefore held that the two tests cannot be sufficient evidence to hold that the stuff recovered from the respondent, the sample of which was analysed by the Chemical Examiner, was 'poppy straw'. The High Court further held that the prosecution had failed to prove the sample to be of 'poppy straw' within the meaning of the 1985 Act and therefore, the respondent was not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the 1985 Act. Accordingly, the High Court, vide impugned judgment dated 2nd November 2007, allowed the appeal and set aside the judgment and order of conviction and sentence dated 29th November 2004 passed by the trial court. Being aggrieved thereby, the State preferred an appeal before this Court.

**7.** During the pendency of the appeal, this Court found that important questions of law arose for consideration on the aforesaid issue. Vide a subsequent order of this Court dated 6th February 2019, the Union of India through its Secretary, Department of Revenue, Ministry of Finance, New

Delhi was directed to be impleaded as the second respondent.

**Submissions:**

**8.** We have accordingly heard Shri Abhinav Mukerji, learned Additional Advocate General (for short, "AAG") for the State of Himachal Pradesh and Shri Neeraj Jain, learned Senior Counsel appearing on behalf of the respondents.

**9.** We have also heard Shri K. Parameshwar, learned *amicus curiae* and Shri K.M. Nataraj, learned Additional Solicitor General (for short, "ASG") for the Union of India.

**10.** Shri Mukerji submitted that the view taken by the High Court is totally incorrect. The learned AAG submitted that under Article 47 of the Constitution of India, the State is duty bound to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. He submitted that the 1985 Act has been enacted not only to honour the constitutional commitments but also to honour the International Conventions.

**11.** The learned AAG submitted that different definitions have been given for 'opium', 'opium derivative', 'opium poppy' and 'poppy straw' under Clauses (xv), (xvi), (xvii) and (xviii) of Section 2 of the 1985 Act. He submitted that, as per Section 15 of the 1985 Act, when a person, in contravention of any provisions of the said Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw, he shall be punished with rigorous imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both, or for a term up to ten years and with fine which may extend to one lakh rupees, or for a term which shall not be less than ten years but may extend to twenty years and a fine which shall not be less than one lakh rupees but may extend to two lakh rupees, depending upon the quantity of 'poppy straw'. He submitted that, similarly, Sections 17 and 18 of the 1985 Act deal with punishment for contravention in relation to 'prepared opium', 'opium poppy' and 'opium' respectively. The learned AAG submitted that the High Court has wrongly

relied on the judgment of this Court in the case of ***Amarsingh Ramjibhai Barot v. State of Gujarat***[1]. He submitted that the issue involved in the said case was totally different.

**12.** Shri Mukerji submitted that the National Institute of Science and Communication, CSIR, New Delhi, in its first re-print of the Book titled "Wealth of India", which is a dictionary of Indian Raw Materials and Industrial Products, 1966 (hereinafter referred to as "the 1966 Dictionary"), mentions six species of 'papaver'. He submitted that a perusal of the said authority would reveal that 'papaver somniferum L' is cultivated as the chief source of 'opium'. He submitted that it is only 'papaver somniferum L' which contains the alkaloids 'morphine' and 'codeine'. Shri Mukerji submitted that the United Nations International Drug Control Programme has recommended methods for testing 'opium', 'morphine' and 'heroin' in its Manual for use by the National Drug Testing Laboratories, 1998 (hereinafter referred to as the "1998 Manual"). He submitted that the two tests which are conducted by the appellant are the only tests

[1] **(2005) 7 SCC 550**

which are recommended by the United Nations. The learned AAG further submitted that the Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India, New Delhi has issued "Working Procedure Manual : Narcotics" in the year 2021 (hereinafter referred to as the "2021 Manual"). He submitted that the said Manual contains the tests which are required to be conducted for finding out the presence of 'opium/crude morphine' and 'meconic acid'. The learned AAG submitted that 'papaver somniferum L' is the only species which contains 'morphine' and 'meconic acid'. It is therefore submitted that the finding of the High Court that these two tests are not sufficient to reach to a conclusion that the species belong to 'papaver somniferum L' and as such, is not punishable under Section 15 of the 1985 Act, does not lay down a correct proposition of law.

**13.** Shri Mukerji relies on the judgments of this Court in the cases of ***State of M.P. and Others v. Ram Singh***[2], ***Swantraj and Others v. State of Maharashtra***[3] and ***NEPC***

[2] **(2000) 5 SCC 88**
[3] **(1975) 3 SCC 322**

***Micon Limited and Others v. Magma Leasing Limited***[4] in support of the proposition that the interpretation which advances the purpose of the Act has to be preferred as against the one which defeats the purpose of the Act.

**14.** Shri Jain submitted that since the provisions of the 1985 Act are very stringent in nature, the Court will have to prefer an approach of strict interpretation of the statute. He submitted that the High Court has rightly held that the definition of 'opium poppy' as given under Clause (xvii) of Section 2 of the 1985 Act is in two parts. He submitted that, as per sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, 'opium poppy' means "the plant of the species 'papaver somniferum L", whereas sub-clause (b) thereof empowers the Central Government to notify any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted. It is therefore submitted that, unless any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted is notified by the Central Government, the same cannot be considered to be 'opium' for the purpose of the 1985 Act. It is submitted that, as such,

[4] **(1999) 4 SCC 253**

unless the prosecution proves that the genus of the material seized was a species of 'papaver somniferum L', the conviction could not be sustained. He, therefore, submitted that no interference would be warranted with the judgment of the High Court. The other counsel have adopted the submissions advanced by Shri Jain.

**15.** Shri Nataraj, learned ASG also submitted that since the 1985 Act is both penal and beneficial, the interpretation which advances the purpose of the Act will have to be preferred. The learned ASG relies on the judgment of this Court in the case of ***NEPC Micon Limited*** (supra).

**16.** Shri Parameshwar, learned *amicus curiae* submitted that the following three issues arise for consideration in the present matter:

(i) When the statute identifies only one species as contraband material and when the legislature leaves it open to the Central Government to notify any other species, it will not be permissible for the State to argue that a test which will prove that the contraband material

belongs to the species of 'papaver somniferum L' is not necessary;

(ii) What is the appropriate test to identify that the contraband belongs to the species of 'papaver somniferum L'; and

(iii) Whether the first question is relevant only for 'poppy husk' or 'poppy straw' or for all other forms of 'poppies'?

**17.** Shri Parameshwar submitted that there are three families of narcotic drugs which are dealt with by the statute, namely, 'opium', 'cannabis (hemp)' and 'coca leaf'. He submitted that it is only the plant of 'papaver somniferum L' which contains 'opium'. He fairly submitted that the earlier enactments only recognized 'papaver somniferum L' as a source for 'opium'. It is only the 1985 Act which has also included sub-clause (b) in Clause (xvii) of Section 2 which provides for any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted. However, such a species, to come under the provisions of the 1985 Act, is required to be notified by the Central Government. He fairly submitted that no such notification recognizing any

other species of 'papaver' has been notified by the Central Government.

**18.** Shri Parameshwar also agrees with the submissions made by Shri Mukerji that India is also obligated to honour its obligations as per the decisions taken in various International Conventions. Shri Parameshwar has also taken us through different statutes, enacted by different countries to highlight the relevant provisions with regard to 'opium'. Shri Parameshwar has also taken us to the judgment rendered by Justice Hidayatullah in the case of ***Baidyanath Mishra and Another v. The State of Orissa***[5], wherein this Court held that when evidence shows that it could be 'opium', it will not be necessary to conduct any further analysis. However, he submitted that the said position would no longer be valid in view of the subsequent judgment of this Court in the case of ***Harjit Singh v. State of Punjab***[6], wherein this Court considered the provisions of the 1985 Act and held that chemical analysis of the contraband material is essential to prove a case against the accused under the 1985 Act. Shri Parameshwar submitted that the

[5] **1968 (XXXIV) Cuttack Law Times-I**
[6] **(2011) 4 SCC 441**

Gujarat High Court in the case of ***Hathi @ Mangalsinh Ramdayalji v. State of Gujarat***[7] as well as the Himachal Pradesh High Court in the cases of ***Rajiv Kumar alias Guglu v. State of H.P.***[8] and ***State of H.P. v. Des Raj***[9] have taken a similar view. Shri Parameshwar fairly submitted that, as *amicus curiae*, he has placed both the sides before this Court and it is for this Court to take a view in the interest of justice.

**Legislative History:**

**19.** For appreciating the controversy, it will be relevant to refer to the legislative history prior to the present enactment, i.e., the 1985 Act coming into force.

**20.** The first of such enactments was the Opium Act, 1857 (for short, "1857 Act"), which was enacted for preventing illicit cultivation of 'poppy' and for regulating the cultivation of 'poppy' and the manufacture of 'opium' on account of Government. However, the 1857 Act does not define 'opium'. Thereafter in the year 1878, the Opium Act,

[7] **1992 SCC OnLine Guj 311**
[8] **2007 SCC OnLinee HP 120**
[9] **2013 SCC OnLine HP 371**

1878 (for short, "1878 Act") was enacted to amend the laws relating to 'opium', wherein 'opium' was defined as under:

> "**3. Interpretation clause. -** .....
>
> 'Opium' means-
>
> (i) the capsules of the poppy (papaver somniferum, L), whether in their original form or cut, rushed or powdered, and whether or not juice has been extracted therefrom;
>
> (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
>
> (iii)any mixture with or without natural materials, of any of the above forms of opium;
>
> but does not include any preparation containing not more than 0.2 per cent of morphine, or a manufactured drug as defined in Section 2 of the Dangerous Drugs Act, 1930;"

**21.** Thereafter, the Dangerous Drugs Act, 1930 (for short, "1930 Act") came to be enacted. The 1930 Act came to be enacted in pursuance to the Second International Opium Conference (Geneva Convention). The preamble of the 1930 Act would reveal that the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband trafficking and abuse of dangerous drugs, especially those derived from 'opium', 'Indian hemp'

and 'coca leaf'. It defined 'opium' in Clause (e) of Section 2 as under:

> "**2. Definitions.** .....
>
> (e) "opium" means
>
> (i) the capsules of the poppy (Papaver somniferum L.);
>
> (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
>
> (iii) any mixture, with or without neutral materials, of any of the above forms of opium; but does not include any preparation containing not more than 0.2 per cent of morphine;"

**22.** It would also be relevant to refer to the definition of 'opium' as found in the Maharashtra Prohibition Act, 1949 (for short, "1949 Act"), which reads thus:

> **"(30) "opium" means –**
>
> (a) The capsules of the poppy (Papaver Somaniforum L), [whether in their original form or cut, or crushed or powdered and whether or not the juice has been extracted therefrom;
>
> (b) The spontaneously coagulated juice of such capsules which has not been submitted to any manipulation other than those necessary for packing and transport; and
>
> (c) Any mixture with or without neutral materials of any of the above forms of opium;

but does not include any preparations containing not more than 0.2 percent of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs of Act, 1930."

**23.** Thereafter, the present Act, i.e., the 1985 Act came to be enacted in the year 1985. It will be relevant to refer to the Statement of Objects and Reasons of the 1985 Act, which reads thus:

"**STATEMENT OF OBJECTS AND REASONS**

The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The principal Central Acts, namely, the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted a long time ago. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level, many deficiencies in the existing laws have come to notice, some of which are indicated below:

(i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of 3 years with or without fine and 4 years imprisonment with or without fine for repeat offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers have been some times let off by the courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of

> our neighboring countries and destined mainly to Western countries.
>
> (ii) The existing Central laws do not provide for investing the officers of a number of important Central enforcement agencies like Narcotics, Customs, Central Excise, etc., with the power of investigation of offences under the said laws.
>
> (iii) Since the enactment of the aforesaid three Central Acts a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these treaties and conventions which entails several obligations which are not covered or are only partly covered by the present Acts.
>
> (iv) During recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and posed serious problems to national governments. There is no comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the Convention on Psychotropic Substances, 1971 to which India has also acceded."

**24.** It could thus be seen that the 1985 Act came to be enacted since the three earlier enactments, i.e., the 1857 Act, the 1878 Act and the 1930 Act were enacted a long time ago. It was also noticed that there were developments in the field of illicit drug trafficking and drug abuse at the national and international level. Many deficiencies had come to notice in

the three earlier enactments including the inadequacy of penalties. It was also noticed that the existing central laws did not provide for vesting a number of important Central enforcement agencies with the power of investigation of offences under the said laws. It was also noticed that, since the earlier three enactments came into existence, various international treaties and protocols were evolved. The Government of India was a party to these treaties and conventions which entail several obligations which are not covered under the earlier three enactments. Thus, it was felt that there was an urgent need for the enactment of a comprehensive legislation of narcotic drugs and psychotropic substances.

**25.** The 1985 Act defined 'opium', 'opium derivative', 'opium poppy', 'poppy straw' and 'poppy straw concentrate' under Clauses (xv), (xvi), (xvii), (xviii) and (xix) of Section 2, which read thus:

> "**2. Definitions .** –
>
> (xv) "opium" means-
>
> (a) the coagulated juice of the opium poppv; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,

but does not include any preparation containing not more than 0.2 per cent. of morphine:

(xvi) "opium derivative" means-

(a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts:

(d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

(xvii) “opium poppy” means-

(a) the plant of the species *Papaver* somriferum L.; and

> (b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy-for the purposes of this Act;
>
> (xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;
>
> (xix) "poppy straw concentrate" means the material arising when poppy straw" has entered into a process for the concentration of its alkaloids;"

**26.** In the present case, we are concerned with the conviction in relation to 'poppy straw'. 'Poppy straw' has been defined to mean all parts of 'opium poppy' after harvesting, whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom. However, the said definition excludes the seeds. As such, 'poppy straw' would mean all parts of 'opium poppy' except the seeds. Therefore, for bringing home the guilt of the accused for contravention in relation to 'poppy straw', it will be relevant to refer to the definition of 'opium poppy'. 'Opium poppy' has been defined under Clause (xvii) of

Section 2 of the 1985 Act which has been reproduced hereinabove. As per sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, 'opium poppy' means the plant of the species 'papaver somniferum L'. As per sub-clause (b) thereof, 'opium poppy' would also mean the plant of any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' can be extracted and which the Central Government, by notification in the official gazette, has declared to be 'opium poppy' for the purposes of the 1985 Act.

**27.** Section 15 of the 1985 Act which provides for punishment for contravention in relation to 'poppy straw' reads thus:

> "**15. Punishment for contravention in relation to poppy straw.-** Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,-
>
> (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to then thousand rupees or with both; or

(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; or

(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.

**28.** A perusal of Section 15 of the 1985 Act would reveal that, whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable with rigorous imprisonment of minimum one year up to twenty years depending on the quantity and also a fine which may extend to minimum ten thousand rupees up to two lakh rupees.

**29.** It could thus be seen that, for bringing home the guilt of the accused within the ambit of Section 15 of the 1985 Act, it is necessary to establish that the contravention is in relation to 'poppy straw'. A combined reading of the definition given under Clauses (xvii) and (xviii) of Section 2, and Section 15 of the 1985 Act would reveal that, for bringing home the guilt of the accused, it will be necessary to establish that the seized material collected is any part of 'opium poppy' except the seeds. As such, what would be required to establish is that the genus of the seized material is 'opium poppy' as defined under Clause (xvii) of Section 2 of the 1985 Act.

**30.** The question that requires to be considered is as to whether it is sufficient for the prosecution to establish that the raw material contains 'morphine' and 'meconic acid' to bring it under sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act or is it necessary for the prosecution to further establish that, though the seized material contains 'morphine' and 'meconic acid', the genus of the seized material is 'papaver somniferum L' or any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid'

can be extracted and which is notified in the Official Gazette by the Central Government to be 'opium poppy' for the purposes of the 1985 Act.

**31.** It will be relevant to note that, though the 1857 Act and the 1930 Act only defined 'opium', for the first time in the 1985 Act, separate definitions have been provided for 'opium', 'opium poppy', 'poppy straw' and 'poppy straw concentrate'.

**32.** We have already referred to the legislative history. The first of the enactments to deal with is the 1878 Act and the second one is the 1930 Act. Both these enactments defined 'opium' to mean the capsules of the 'poppy' (papaver somniferum L), and the spontaneously coagulated juice of such capsules which has not been submitted to any manipulation other than those necessary for packing and transport. The said definitions also included any mixture with or without neutral materials of any of the above forms of 'opium'. However, if any such preparations contained less than 0.2% of 'morphine', it was excluded from the definition of 'opium'. The 1949 Act also provided a similar definition.

**International Developments:**

**33.** While we notice the developments on the legislative side in India in enacting various legislations till the 1985 Act came into existence, it will also be pertinent to note that there was a development in the last century at the international level so as to make a combined effort in controlling and prohibiting the menace of drugs and psychotropic substances.

**34.** The International Opium Convention was signed at The Hague on 23rd January 1912 (hereinafter referred to as "the 1912 Convention"). As per the agreement, in the 1912 Convention, 'raw opium' was defined as under:

> "***Definition.*** – By "raw opium" is understood :
>
> The spontaneously coagulated juice obtained from the capsules of the *papaver somniferum* which has only been submitted to the necessary manipulations for packing and transport."

**35.** In order to further the determination to continue the efforts to combat drug addiction and illicit trafficking in narcotic substances and being aware about the fact that the desired results could be achieved only by close collaboration between the contracting parties, at the United Nations

Opium Conference of 1953, the "Protocol for Limiting and Regulating the Cultivation of the 'poppy plant', the Production of, International and Wholesale Trade in, and use of Opium" (hereinafter referred to as "the 1953 Protocol) came to be resolved. It will be relevant to refer to the definitions of 'poppy', 'poppy straw' and 'opium' provided in the said Protocol, which read thus:

> "Poppy" means the plant *Papaver somniferum L.,* and any other species of *Papaver* which may be used for the production of opium;
>
> "Poppy straw" means all parts of the poppy after mowing (except the seeds) from which narcotics can be extracted;
>
> "Opium" means the coagulated juice of the poppy in whatever form including raw opium, medicinal opium, and prepared opium, but excluding galenical preparations;"

**36.** The efforts to combat the menace of drugs at the international level continued. Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind, and conscious of the duty to prevent and combat this evil and understanding that such a universal action calls for an international co-operation, the Single Convention on Narcotic Drugs, 1961 (hereinafter referred to as "the 1961

Convention") was resolved. It was further amended by the 1972 Protocol. It will be relevant to refer to the definitions of 'medicinal opium', 'opium', 'opium poppy' and 'poppy straw', as found in the 1961 Convention:

> "o) "Medicinal opium" means opium which has undergone the processes necessary to adapt it for medicinal use.
> p) "Opium" means the coagulated juice of the opium poppy.
> q) "Opium poppy" means the plant of the species Papaver somniferum L.
> r) "Poppy straw" means all parts (except the seeds) of the opium poppy, after mowing."

**37.** It could thus be seen that the 1912 Convention as well as the 1961 Convention, as amended by the 1972 Protocol, recognized even at the international level that it was the plant 'papaver somniferum L' which was used for manufacture of 'opium'. In the 1953 Protocol, it was for the first time noticed that there could be other species of 'papaver' which may be used for the production of 'opium'. As such, though the definition in the 1953 Protocol included the plant of 'papaver somniferum L', it also included any other species of 'papaver' which may be used for the production of 'opium'.

**38.** It will also be relevant to refer to the following extracts from the "Commentary on the Single Convention on Narcotic Drugs, 1961" (for short, "the said Commentary"), which reads thus:

> "1. It is sometimes difficult to decide, and therefore a difference of opinion exists whether different forms of a plant constitute different varieties of the same species or different species of the same genus, e.g. "*Papaver setigerum*" is by some considered to be a variety of the species *Papaver somniferum L.* and by others a separate species. It appears that some, albeit insignificant, quantities of morphine can be obtained from *Papaver setigerum.*
>
> 2. The authors of the Single Convention appear to have assumed that all plants from which opium can be obtained in significant quantities are only varieties of a single species, *Papaver somniferum L.* They therefore defined "opium poppy" as the plant of the species *Papaver somniferum L.* The 1953 Protocol, on the other hand, defines "Poppy" to mean "the plant *Papaver somniferum L.,* and *any other species of Papaver* which may be used for the production of opium".
>
> 3. Should any plant which is considered not to be a variety of the species Papaver somniferum L., but another species of the genus Papaver, be found to yield opium, the plant itself and its product would not be covered by the control provisions of the Single Convention, but only by those of the Protocol. The coagulated juice of the plant would for the purposes of the Single Convention not be "opium" but could by the operation of article 3 of the Single Convention be listed in Schedule I

> and become a "drug" of Schedule I – like the "opium" obtained from the species "Papaver somniferum L." – and thus be placed under the regime provided by the Single Convention for drugs in this Schedule. Its separation from the plant, not being "opium poppy" within the meaning of the Single Convention, would also not be "production", but "manufacture". Another way of handling such a situation would be an amendment of the definition of opium poppy so as to cover the additional species found to yield opium. It might in such a case be possible to obtain for such a revision the consensus of the Parties to the Single Convention required for the application of the simplified procedure foreseen in article 47."

**39.** The said Commentary would show that, it was at times difficult to consider as to whether different varieties of the same species or different species of the same genus, i.e., 'papaver setigerum' could be considered to be a variety of the species 'papaver somniferum L' or a separate species. It noted that the authors of the Single Convention appeared to have assumed that all plants from which opium can be obtained in significant quantities are only varieties of a single species, i.e., Papaver somniferum L. As such, 'opium poppy' was defined as the plant of the species 'papaver somniferum L'. It also noted that though the 1953 Protocol included the plant 'papaver somniferum L' within the definition of 'poppy',

it also included any other species of 'papaver' which may be used for the production of 'opium'. The authors of the said Commentary therefore opined that, if a plant which is considered not to be a variety of the species 'papaver somniferum L' but of another species of the genus 'papaver', be found to yield opium, the plant itself and its product would not be covered by the controlling provisions of the Single Convention, but only by those of the Protocol. The coagulated juice of the plant would, for the purpose of the Single Convention, not be 'opium' but could, by the operation of Article 3 of the Single Convention be listed in Schedule I and become a 'drug' of Schedule I like the 'opium' obtained from the species 'papaver somniferum L'. The authors of the said Commentary, therefore, recommended that, for handling such a situation, the definition of 'opium poppy' be amended so as to cover the additional species found to yield 'opium'.

**40.** We find that all these international developments need to be taken into consideration while interpreting the 1985 Act inasmuch as the Statement of Objects and Reasons itself mentioned that there had been developments at the international level with regard to control of any drugs and

psychotropic substances and the 1985 Act is enacted to give effect to the commitments in the international conventions.

**Scientific Studies:**

**41.** A lot of research has undertaken with regard to the exact definition of 'opium poppy'. In the 1966 Dictionary, 'papaver somniferum L' is defined as 'opium poppy'. The said dictionary would reveal that 'opium poppy' was cultivated for the production of 'opium' and for 'poppy seeds'. In India, cultivation of 'poppy' for 'opium' was established by the early sixteenth century and was a considerable source of revenue for successive governments. It also noted that 'opium' was freely sold as an intoxicant within the country and exported for the same purpose to the far-eastern countries, particularly China. This resulted in the high acreage under 'opium poppy' cultivation in the early part of the present century. The flagrant misuse of 'opium' and its deleterious effects physically, mentally and morally became so widespread that it became a serious social problem in many countries. As a result of an agreement with China to progressively reduce the export of 'opium' to that country, the total area under 'poppy' cultivation substantially declined

in 1960-1961. Further, the Government of India decided in the year 1949 to stop 'opium' consumption for non-medical and quasi-medical uses in the country completely by 1958-1959.

**42.** It will be apposite to reproduce the relevant extracts from the 1966 Dictionary as under:

> "CHEMICAL COMPOSITION
>
> Fresh opium is a brownish, somewhat plastic solid, becoming tough and occasionally brittle on keeping and has a characteristic fruity odour. Opium is valued for the alkaloids it contains, the total alkaloid content varying from 5 to 25% (generally 20%). A large number of alkaloids have been isolated from opium, of which at present 25 are known (Table 3). Morphine, codeine thebaine, narcotine, narceine and papaverine are the chief opium alkaloids, and of these morphine is the most abundant and by far the most important. Morphine exists in combination with meconic and sulphuric acids in the form of salts readily soluble in water. Other alkaloids occur in opium partly in the free state and partly as salts (Thrope, IX, 99; Annett et al., Mem Dep. Agric India, Chem, 1921-23, 6-1; Merck Index, 756, Chopra et al., 169; Henry, 178; U.S.D., 1955, 927)
>
> The valuation of opium depends upon its morphine-content which varies markedly in commercial samples."

**43.** A perusal of the aforesaid would reveal that 'papaver somniferum L' contains five major alkaloids, viz., 'Morphine',

'Narcotine', 'Papaverine', 'Thebaine' and 'Codeine'. It would also reveal that 'morphine' exists in combination with 'meconic' and 'sulphuric' acids. The valuation of 'opium' depends upon its 'morphine-content' which varies markedly in commercial samples.

**44.** It will also be relevant to refer to the 1998 Manual, which recommended methods for the testing of 'opium', 'morphine' and 'heroin'. The 1998 Manual deals with production of illicit 'opium'. The relevant extracts from the 1998 Manual reads thus:

> "The immediate precursor of heroin is morphine, and morphine is obtained from opium. Opium is the dried milky juice (latex) obtained from the unripe seed pods of *Papaver somniferum L.*, more commonly referred to as the opium or oil poppy. Morphine has also been reported to be present in *Papaver setigerum*, and as a minor alkaloid in *Papaver decaisnei* and *Papaver rhoeas*. However, there is no known instance of these poppies being used for opium production, and more recent work has cast considerable doubt as to the presence of morphine in *Papaver rhoeas*. A major review by Kapoor on the botany and chemistry of the opium poppy is recommended additional reading."

**45.** It is thus seen that the 1998 Manual also emphasizes that the immediate precursor of 'heroin' is

'morphine', and 'morphine' is obtained from 'opium'. It further states that 'opium' is the dried milky juice obtained from the unripe seed pods of 'papaver somniferum L'. It also notices that 'morphine' has also been reported to be present in 'papaver setigerum', and as a minor alkaloid in 'papaver decaisnei' and 'papaver rhoeas'. It further notices that there is no known instance of these poppies being used for 'opium' production. It also notices that a recent work has cast considerable doubt as to the presence of 'morphine' in 'papaver rhoeas'. The 1998 Manual also shows that the following major alkaloids are found in 'raw opium':

| **MAJOR ALKALOIDS FOUND IN RAW OPIUM** | | | |
|---|---|---|---|
| **alkaloids** | **min%** | **avg%** | **max%** |
| MORPHINE | 3.1 | 11.4 | 19.2 |
| CODEINE | 0.7 | 3.5 | 6.6 |
| THEBAINE | 0.2 | 3.1 | 10.6 |
| PAPAVERINE | <0.1 | 3.2 | 9.0 |
| NOSCAPINE | 1.4 | 8.1 | 15.8 |

**46.** The 1998 Manual, on research, shows six major constituents in 'opium' and 'crude morphine' samples, viz., 'morphine', 'codeine', 'thebaine', 'papaverine', 'noscapine', and 'meconic acid'.

**47.** Another publication titled as "Analysis of Plant Poisons" authored by Dr. M.P. Goutam and Smt. Shubhra Goutam establishes that, apart from the six major alkaloids found in 'opium', 'meconic acid' is easily detectible in 'papaver somniferum L'. The study states that 'meconic acid' is invariably found in 'opium' and its presence has long been used to indicate 'opium'. The study shows that some species of 'papaver' which produces no morphine but other morphinanes may also contain this acid. However, the study shows that, insofar as 'papaver somniferum L' is concerned, 'morphine' and 'meconic acid' are found in it.

**48.** A publication published by the International Narcotics Control Board namely "Narcotic Drugs Stupefiants Estupefacientes – Estimated World Requirements for 2022", also states thus:

> "3. Opium and poppy straw are the raw materials obtained from the opium poppy plant (Papaver somniferum), from which alkaloids such as morphine, thebaine, codeine and oripavine are extracted. Concentrate of poppy straw is a product obtained in the process of extracting alkaloids from poppy straw. It is controlled under the 1961 Convention. Detailed information on the supply of opiate raw material and demand for opiates for medical and scientific purposes is provided in part three of the present publication."

**49.** It will further be relevant to note that Section 3 of the 2021 Manual deals with 'opium', 'opium alkaloids' and 'poppy straw'. It will be relevant to refer to Section 3.7 of the 2021 Manual, which reads thus:

> **"3.7 Methods:**
>
> **3.7.1 Colour Tests:**
> Positive results of these tests are only presumptive indication for the presence of opium alkaloids. It is mandatory for analyst to confirm such results by use of any alternate technique.
>
> **a) Marquis test [1]:** Take a small amount of suspected sample in a test tube and add about 10 drops of water, crush the sample with a glass rod. Place a few drops of water solution through filter paper/supernatant liquid on a spotting plate and add few drops of Marquis reagent. The development of purple violet color indicates the presence of opium/crude morphine.
>
> **Preparation of Marquis Reagent:** 8-10 drops of 40% formaldehyde solution is added to 10 ml of Con. Sulphuric acid.
>
> **b) Ferric Salt Test [1]:** Take small aount of suspected material on a spot plate and add about 2 drops of water, triturate the sample until the water becomes brown colour. Take a drop of brown liquid to another part of the spot plate, add one drop of reagent. Appearance of brown purple colour indicates the positive test for the presence of meconic acid. This meconic acid is present in raw and prepared opium, but it will not be detected in crude morphine.

**Preparation of Ferric Salt Reagent:** Dissolve 1 g of ferric sulphate in 20 ml of water.

**Alternate Test of Meconic Acid [2] :**

**c) Ferric Chloride Test**: Dissolve appropriate sample of opium in water and add a drop of dilute hydrochloric acid by few drops of 10% solution of ferric chloride. A red colour is appeared. Divide this solution into two parts. Take first part and add dilute hydrochloric acid to it in excess and warm. The red colour of the solution remains there. Take the second part and add a solution of mercuric chloride. The colour of the solution does not affect.
**Preparation of Mercuric Chloride Reagent:** Dissolve 5 gms. mercuric chloride in 100 ml of water.

**Dilute Hydrochloric Acid [3]:** About 10% W/W of HC1 in water

**Porphyroxine Test [1]:** Take a small amount of suspected material on a spot plate and add two drops of water. Triturate it with glass rod. Take one drop of brown liquid from this mixture to another part of the plate, add one drop of 2 N hydrochloric acid and heat gently. Appearance of red colour indicates the presence of porphyroxine."

**50.** It could thus be seen that, though the positive results in the colour tests are only an indication for the presence of 'opium alkaloids', it is mandatory to confirm such results by the use of an alternate technique. It would further reveal that the Marquis Test indicates the presence of

'opium/crude morphine'. The Ferric Salt Test would reveal the presence of 'meconic acid'. It could thus be seen that, though colour test is positive, the same is required to be confirmed to establish the presence of 'opium/crude morphine' and 'meconic acid'.

**51.** In this background, we will have to consider the present issue.

**52.** We find that two principles of interpretation of statutes would govern the present case. The first one being the Mischief Rule of interpretation.

**Heydon's/Mischief Rule:**

**53.** As early as in the year 1955, the Constitution Bench of this Court in the case of ***The Bengal Immunity Company Limited v. The State of Bihar and Others***[10], has observed thus:

> "**23.** It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's case* [3 Co. Rep 7a : 76 ER 637] was decided that—
>
> > "... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the

[10] **[1955] 2 SCR 603**

common law) four things are to be discerned and considered:

> 1st. What was the common law before the making of the Act.
>
> 2nd. What was the mischief and defect for which the common law did not provide.
>
> 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and
>
> 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bona publico*."

In *In re Mayfair Property Company* [LR (1898) 2 Ch 28 at p. 35] Lindley, M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported *Heydon case*". In *Eastman Photographic Material Company* v. *Comptroller General of Patents, Designs and Trade Marks* [LR (1898) AC 571 at 576] Earl of Halsbury reaffirmed the Rule as follows:

> "My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which

> provided the remedy. These three being compared I cannot doubt the conclusion."
>
> It appears to us that this rule is equally applicable to the construction of Article 286 of our Constitution. In order to properly interpret the provisions of that article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

**54.** The law laid down in the case of ***The Bengal Immunity Company Limited*** (supra) has been consistently followed by this Court. We will therefore have to examine the following four factors:

(i) What was the position before the enactment of the 1985 Act?

(ii) What was the mischief and defect for which the earlier enactments did not provide?

(iii) What remedy had the Parliament resolved to cure the mischief and defect?

(iv) The true reason for the remedy.

**55.** As already discussed hereinabove, the International Conventions consistently recognized that the 'papaver

somniferum L' was used for the production of 'opium'. The 1878 Act as well as the 1930 Act also clearly recognized that 'opium' was derived from 'papaver somniferum L'. The voluminous scientific study has also recognized that the 'papaver somniferum L' contains 'morphine' and 'meconic acid'.

**56.** The 1953 Protocol first noticed that there are other species of 'papaver' which may be used for the production of 'opium'. The said Commentary again noticed this position. It also noticed the difficulty in deciding whether different forms of a plant constitute different varieties of the same species or different species of the same genus, for example, 'papaver setigerum'. It noticed that some considered it to be a variety of the species 'papaver somniferum L' and others considered it a separate species. It also noticed that insignificant quantities of 'morphine' can be obtained from 'papaver setigerum'. The said Commentary noticed that the authors of the Single Convention appeared to have assumed that all plants from which 'opium' can be obtained in significant quantities are only varieties of a single species 'papaver somniferum L'. It noted that they, therefore, defined

'opium poppy' as the plant of the species 'papaver somniferum L'. It also noted that the 1953 Protocol, on the other hand, defined 'poppy' to mean the plant 'papaver somniferum L' and any other species of 'papaver' which may be used for the production of 'opium'. To overcome this difficulty, the said Commentary recommended amendment in the definition of 'opium poppy' so as to cover the additional species found to yield 'opium'.

**57.** It is to be noted that, the Statement of Objects and Reasons of the 1985 Act would reveal that the 1985 Act was enacted since it was found that the earlier three enactments were not found sufficient to meet the challenges thereunder. It is also noticed that, after the enactment of the earlier three Acts, a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols and as such, it was found necessary to bring out a consolidated enactment.

**58.** Viewed from this angle, it is clear that the legislature was aware that the plant of species 'papaver somniferum L' which contained 'morphine' and 'meconic acid' was used for the production of 'opium'. However, it was also noticed that

there could be some other species of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' could be extracted. In this background, Clause (xvii) of Section 2 of the 1985 Act was divided into two parts. In view of sub-clause (a) of Clause (xvii) thereof, the plant of the species 'papaver somniferum L', which was already known to be used for production of 'opium' was meant to be 'opium poppy' for the purpose of the 1985 Act. However, in view of sub-clause (b) of Clause (xvii) thereof, the legislature provided discretion with the Central Government to declare the plant of any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' could be extracted to be 'opium poppy' for the purpose of the 1985 Act.

**59.** The legislature, being aware that scientific studies undisputedly establish that 'papaver somniferum L' contains 'morphine' and 'meconic acid' and as such, it may be used for the production of 'opium', by virtue of sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, defined it to mean 'opium' for the purpose of the 1985 Act. Whereas, since it was noticed that some other species of 'papaver somniferum L' could also be used for the production of 'opium' which

contains 'opium' or any 'phenanthrene alkaloid', it vested a discretion with the Central Government to issue a notification in the Official Gazette to declare such a plant to be 'opium poppy' for the purpose of the 1985 Act.

**60.** Since it is recognized by the earlier three enactments as well as the International Conventions and scientific studies that 'papaver somniferum L' contains 'morphine' and 'meconic acid', in our view, after the two tests positively indicate the sample of 'poppy straw' to contain 'morphine' and 'meconic acid', a further requirement to establish that the contraband species belong to the species of only 'papaver somniferum L' would be contrary to the legislative intent.

**61.** It is further to be noted that the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (for short, "1988 Convention"), has again defined 'opium', which reads thus:

> "Opium poppy" means the plant of the species "papaver sominferum L";

**62.** It is to be noticed that, though the 1953 Protocol for the first time included any other species of 'papaver', which was being used for the production of 'opium', the subsequent

Conventions of 1961 and 1988 restricted the definition of 'opium poppy' to be a plant of the species of 'papaver somniferum L'. It is thus clear that, the legislature by incorporating sub-clause (a) in Clause (xvii) of Section 2 of the 1985 Act, intended to continue 'papaver somniferum L' in the definition of 'opium poppy'. However, by taking abundant precautions and to take care of a situation where any other species of 'papaver' was found to be used for the production of 'opium', the legislature vested the Central Government with a power to include such a variety to mean 'opium poppy' for the purpose of the 1985 Act.

**63.** In our view, the defect that was noticed by the legislature was that, though 'papaver somniferum L', which contained 'morphine' and 'meconic acid' and was used for the production of 'opium', was already included in the definition of 'opium' in the earlier enactments, there was also a possibility of other variety of 'papaver' being used for 'opium' production, but could not be brought under the prohibitory and regulatory measures. This position would also be clarified by the observations made in the said Commentary referred to hereinabove.

**64.** The remedy, in our view, which the Parliament has provided is by way of incorporating sub-clause (b) in Clause (xvii) of Section 2 of the 1985 Act thereby empowering the Central Government to notify any other species of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' could be extracted, to be declared as 'opium poppy' for the purpose of the 1985 Act.

**65.** The true reason for the remedy, in our view, is to empower the Central Government to include any other species of 'papaver' which may be used for the production of 'opium' and bring the same under the purview of the 1985 Act. The reason is that, if it is found that any species of 'papaver' is being used for the production of 'opium', the production of such a variety should not be permitted and the same be brought under the prohibitory and regulatory measures as provided under the 1985 Act.

**Purposive Interpretation:**

**66.** That leaves us to deal with the next principle of interpretation which would govern the case. By now, it is a settled principle of law that an enactment has to be incorporated in such a manner which advances the purpose

of the Act rather than interpretating in such a manner which defeats the purpose of the Act.

**67.** In the case of ***State of Kerala v. Mathai Verghese and Others***[11], the High Court of Kerala has held that, for appreciating the provisions of Section 489-A of the Indian Penal Code, 1860 for possession of contraband notes, it was necessary to establish that the said currency notes would mean only Indian currency notes. This Court, reversing the judgment of the Kerala High Court, held thus:

> "**6.** .....It is not for the court to reframe the legislation for the very good reason that the powers to "legislate" have not been conferred on the court. When the expression "currency note" is interpreted to mean "Indian currency note", the width of the expression is being narrowed down or cut down. Apart from the fact that the court does not possess any such power, what is the purpose to be achieved by doing so? ***A court can make a purposeful interpretation so as to 'effectuate' the intention of the legislature and not a purposeless one in order to "defeat" the intention of the legislators wholly or in part.*** When the court (apparently in the course of an exercise in interpretation) shrinks the content of the expression "currency note", to make it referable to only "Indian currency note", it is defeating the intention of the legislature partly inasmuch as the court makes it lawful to counterfeit notes other than Indian currency notes. ***The manifest purpose of the***

[11] **(1986) 4 SCC 746**

> ***provision is that the citizens should be protected from being deceived or cheated.*** The citizens deal with and transact business with each other through the medium of currency [ Currency n. 1 a metal or paper medium of exchange that is in current use. (Collins English Dictionary)] (which expression includes coins as also paper currency that is to say currency notes). ***It is inconceivable why the legislature should be anxious to protect citizens from being deceived or cheated only in respect of Indian currency notes and not in respect of currency notes issued by other sovereign powers. The purpose of the legislation appears to be to ensure that a person accepting a currency note is given a genuine currency which can be exchanged for goods or services and not a worthless piece of paper which will bring him nothing in return, it being a counterfeit or a forged currency note. Would the legislature in its wisdom and anxiety to protect the unwary citizens extend immunity from being cheated in relation to Indian currency notes but show total unconcern in regard to their being cheated in respect of currency notes issued by any foreign State or sovereign power?*** ……."
>
> [emphasis supplied]

**68.** This Court holds that the manifest purpose of the provision was that the citizens should be protected from being deceived or cheated. It was also held that the court can make a purposive interpretation so as to effectuate the intention of the legislature and not a purposeless one in

order to defeat the intention of the legislators wholly or in part. It held that, if the court restricts the expression 'currency note' only to 'Indian currency note', it would defeat the intention of the legislature inasmuch as the court makes it lawful to possess counterfeit notes other than Indian currency notes.

**69.** In the case of ***Baldev Krishna Sahi v. Shipping Corporation of India Limited and Another***[12], the provisions of Section 630 of the Companies Act, 1956 fell for consideration before this Court. It was argued before the court that, the term "officer" or "employee" used in the said Section would apply to the existing officers or employees and not past officers and employees. Negating the said contention, this Court observed thus:

> "**7.** The beneficent provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company (*a*) where an officer or employee of a company wrongfully obtains possession of property of the company, or (*b*) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. ***It is the duty of the court***

[12] **(1987) 4 SCC 361**

***to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy.***

**8.** Section 630 of the Act which makes the wrongful withholding of any property of a company by an officer or employee of the company a penal offence, is typical of the economy of language which is characteristic of the draughtsman of the Act. The section is in two parts. Sub-section (1) by clauses (*a*) and (*b*) creates two distinct and separate offences. First at these is the one contemplated by clause (*a*), namely, where an officer or employee of a company wrongfully obtains possession of any property of the company during the course of his employment, to which he is not entitled. Normally, it is only the present officers and employees who can secure possession of any property of a company. It is also possible for such an officer or employee after termination of his employment to wrongfully take away possession of any such property. This is the function of clause (*a*) and although it primarily refers to the existing officers and employees, it may also take in past officers and employees. In contrast, clause (*b*) contemplates a case where an officer or employee of a company having any property of a company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. It may well be that an officer or employee may have lawfully obtained possession of any such property during the course of his employment but wrongfully withholds it after the termination of his employment. That appears to be one of the functions of clause (*b*). It would be noticed that clause (*b*) also makes

> it an offence if any officer or employee of a company having any property of the company in his possession knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. That would primarily apply to the present officers and employees and may also include past officers and employees. There is therefore no warrant to give a restrictive meaning to the term "officer or employee" appearing in sub-section (1) of Section 630 of the Act. It is quite evident that clauses (*a*) and (*b*) are separated by the word "or" and therefore are clearly disjunctive."
>
> [emphasis supplied]

**70.** It is thus clear that this Court held that there was no reason to restrict the meaning of the term "officer or employee" to the existing officers or employees. It held that a situation where an officer or employee, though having lawfully obtained the possession of such property during the course of his employment, wrongfully withholds possession of it after the termination of the employment, would squarely be covered by the said Section. The Court also held that it is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation. The interpretation which suppresses the mischief and advances the remedy has to be preferred.

**71.** Though this Court in the case of ***Sanjay Dutt v. State through C.B.I., Bombay (II)***[13], has held that in case of a penal statute, when two reasonable and possible constructions are possible, one which leans in favour of the accused could be preferred, it will still be relevant to refer to the following observations of the Constitution Bench in the said case:

> "**13.** The TADA Act was enacted to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto in the background of escalation of the terrorist and disruptive activities in the country. There is also material available for a reasonable belief that such activities are encouraged even by hostile foreign agencies which are assisting influx of lethal and hazardous weapons and substances into the country to promote escalation of these activities. The felt need of the times is, therefore, proper balancing of the interest of the nation vis-a-vis the rights of a person accused of an offence under this Act. The rights of a person found in unauthorised possession of such a weapon or substance in this context, to prove his innocence of involvement in a terrorist or disruptive activity, is to be determined.
>
> **14.** ***The construction made of any provision of this Act must, therefore, be to promote the object of its enactment to enable the machinery to deal effectively with persons involved in, and associated with, terrorist***

[13] **(1994) 5 SCC 410**

***and disruptive activities while ensuring that any person not in that category should not be subjected to the rigours of the stringent provisions of the TADA Act.*** It must, therefore, be borne in mind that any person who is being dealt with and prosecuted in accordance with the provisions of the TADA Act must ordinarily have the opportunity to show that he does not belong to the category of persons governed by the TADA Act. Such a course would permit exclusion from its ambit of the persons not intended to be covered by it while ensuring that any person meant to be governed by its provisions, will not escape the provisions of the TADA Act, which is the true object of the enactment. Such a course while promoting the object of the enactment would also prevent its misuse or abuse. Such a danger is not hypothetical but real in view of serious allegations supported by statistics of the misuse of provisions of the TADA Act and the concern to this effect voiced even by the National Human Rights Commission.

**15.** ***It is the duty of courts to accept a construction which promotes the object of the legislation and also prevents its possible abuse even though the mere possibility of abuse of a provision does not affect its constitutionality or construction.*** Abuse has to be checked by constant vigilance and monitoring of individual cases and this can be done by screening of the cases by a suitable machinery at a high level. It is reported that in some States, after the decision of this Court in *Kartar Singh* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] , high-powered committees have been constituted for screening all such cases. It is hoped that this action will be taken in all the States throughout the country. Persons aware of instances of abuse, including the National Human Rights Commission, can assist by

> reporting such instances with particulars to that machinery for prompt and effective cure. However, that is no reason, in law, to doubt its constitutionality or to alter the proper construction when there is a felt need by Parliament for enacting such a law to cope with, and prevent terrorist and disruptive activities threatening the unity and integrity of the country."
>
> [emphasis supplied]

**72.** It could thus be seen that the Constitution Bench held that it is the duty of the courts to accept a construction which promotes the object of the legislation. It was held that the construction made of any provision of the Act must be to promote the object of the enactment to enable the machinery to deal effectively with the persons involved in the crime.

**73.** In the case of ***State of M.P. and Others v. Ram Singh*** (supra), this Court held thus:

> "**10.** The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in *R.S. Nayak* v. *A.R. Antulay* [(1984) 2 SCC 183 : 1984 SCC (Cri) 172] held: (SCC p. 200, para 18)

"*18*. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

> **11.** Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it."

**74.** It could be seen that this Court held that a social legislation like the Prevention of Corruption Act, 1988, intended to curb the illegal activities of the public servants, should be liberally construed so as to advance its object. It was held that the overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it.

**75.** In the case of ***Balram Kumawat v. Union of India and Others***[14], this Court had an occasion to consider the meaning of the word 'ivory' used in the Wild Life (Protection) Act, 1972. The court observed thus:

> "**23.** Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow

[14] **(2003) 7 SCC 628**

the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so.

**24. .....**

**25.** A statute must be construed as a workable instrument. *Ut res magis valeat quam pereat* is a well-known principle of law. In *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* [(1989) 3 SCC 709 : AIR 1990 SC 123] this Court stated the law thus : (SCC p. 754, paras 118-120)

> "*118*. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle '*ut res magis valeat quam pereat*'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* [(1900) 2 Ch 352 : 69 LJCh 850 : 83 LT 274 (CA)] Farwell, J. said : (pp. 360-61)
>
> > 'Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to

> find some meaning and not to declare them void for uncertainty.'

*119*. In *Fawcett Properties Ltd.* v. *Buckingham County Council* [(1960) 3 All ER 503 : (1960) 3 WLR 831 (HL)] Lord Denning approving the dictum of Farwell, J. said : (All ER p. 516)

> 'But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute is to bear, rather than reject it as a nullity.'

*120*. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable.

In *Whitney* v. *IRC* [1926 AC 37 : 95 LJKB 165 : 134 LT 98 (HL)] Lord Dunedin said : (AC p. 52)

'A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' "

**26.** The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See *Salmon* v. *Duncombe* [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the intention of

> the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. ……"

**76.** A perusal of the aforesaid observations would reveal that this Court held that, even in relation to a penal statute, any narrow and pedantic, literal and lexical construction may not always be given direct effect and the interpretation has to be preferred with regard to the subject matter of the offence and the object of law it seeks to achieve. The interpretation that defeats the plain intention of the legislature, even though there may be some inexactitude in the language used, will have to be rejected. It has been held that the golden construction for the purpose of bringing out an effective result will have to be accepted.

**77.** In the case of ***Standard Chartered Bank and Others v. Directorate of Enforcement and Others***[15], it was contended before the Constitution Bench of this Court that no criminal proceedings can be initiated against the Company under Section 56(1) of the Foreign Exchange Regulation Act (FERA), 1973 since under the FERA Act, the

[15] **(2005) 4 SCC 530**

minimum punishment prescribed is imprisonment for a term which shall not be less than six months with fine. The argument on behalf of the appellant therein that the penal provision of the statute is required to be construed strictly, was considered in the majority view as under:

> "**23.** The counsel for the appellant contended that the penal provision in the statute is to be strictly construed. Reference was made to *Tolaram Relumal* v. *State of Bombay* [(1955) 1 SCR 158 : 1954 Cri LJ 1333] , SCR at p. 164 and *Girdhari Lal Gupta* v. *D.H. Mehta* [(1971) 3 SCC 189 : 1971 SCC (Cri) 279] . It is true that all penal statutes are to be strictly construed in the sense that the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. ***All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment.*** Here, the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted. It is sheer violence to common sense that the legislature intended to punish the corporate bodies for minor and silly offences and extended immunity of prosecution to major and grave economic crimes.
>
> **24.** The distinction between a strict construction and a more free one has disappeared in modern times and now mostly the question is "what is true construction of

the statute?" A passage in *Craies on Statute Law*, 7th Edn. reads to the following effect:

> "The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' 'A hundred years ago,' said the court in *Lyons' case* [*Lyons* v. *Lyons*, 1858 Bell CC 38 : 169 ER 1158] , 'statutes were required to be perfectly precise and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

At p. 532 of the same book, observations of Sedgwick are quoted as under:

> "The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature, without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy."

**25.** The question, therefore, is what is the intention of the legislature. It is an undisputed fact that for all the statutory offences, company also could be prosecuted as the "person" defined in these Acts includes

> "company, or corporation or other incorporated body"."
>
> [emphasis supplied]

**78.** It is thus clear that the Constitution Bench has reiterated that penal provisions like all other provisions of other statutes are to be construed according to the legislative intent as expressed in the enactment.

**79.** Recently, a three-Judges Bench of this Court in the case of ***Hira Singh and Another v. Union of India and Another***[16], while answering a reference with regard to the correctness of the view taken by this Court in the case of ***E. Micheal Raj v. Narcotics Control Bureau***[17], to the effect that, when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance for the purpose of imposition of punishment, it is the content of narcotic drug or psychotropic substance which would be taken into consideration, the Court held thus:

> "**10.1.** In *Directorate of Enforcement* v. *Deepak Mahajan* [*Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] , it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is

[16] **(2020) 20 SCC 272**
[17] **(2008) 5 SCC 161**

further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted (at SCC pp. 453-54, para 25) the following passage in *Maxwell on Interpretation of Statutes*, 10th Edn. p. 229:

> "*25.* … 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. … Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.' "

***Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts***

> ***to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile***."
>
> [emphasis supplied]

**80.** It could thus be seen that it is more than a settled principle of law that, while interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute.

**Conclusion:**

**81.** As already discussed hereinabove, since many deficiencies were found in the earlier enactments and the provisions therein were not found sufficient to deal with the problems of drug trafficking, it was found necessary to enact a new law since after passing of the earlier three Acts, there were tremendous developments on an international platform and a vast body of international law in the field of narcotics control had evolved through various international treaties and protocols. The Government of India had been a party to

these treaties and conventions which entailed several obligations which were not covered or were only partly covered under the old Acts. It was further noticed that the scheme of the earlier Acts was not a sufficient deterrent to meet the challenge of well-organized gangs of smugglers. It was further noticed that the penalty provided under the old Acts was inadequate. Taking into consideration that the country had, for the last many years, been increasingly faced with the problem of trafficking of drugs, which had posed serious problems to governments at the State and Centre, it was found necessary to enact a comprehensive law. It is thus clear that the dominant purpose of the new enactment was to curb the menace of trafficking of drugs and psychotropic substances. Therefore, the interpretation which advances the purpose of the Act has to be preferred rather than adopting a pedantic and a mechanical approach.

**82.** As already discussed hereinabove, it was well recognized under the earlier enactments, International Conventions and scientific studies that 'papaver somniferum L' plant was the main source for the production of 'opium'. The 1878 Act so also the 1930 Act had recognized this

position. In the International Conventions also, this was recognized. Though for the first time in the 1953 Protocol, in addition to "papaver somniferum L', any other species of 'papaver', which may be used for the production of 'opium' was included in the definition of 'opium', the subsequent conventions of 1961 and 1988 again defined 'opium poppy' as a plant of 'papaver somniferum L'. The scientific study conducted at the national as well as the global level establishes that 'papaver somniferum L' consists of 'morphine' and 'meconic acid'. If the construction as adopted in the impugned judgment is to be accepted, then, even if it is found that the Chemical Examiner's report establishes that the contraband article contains 'morphine' and 'meconic acid', a person cannot be convicted unless it is further established that the contraband material has a genesis in 'papaver somniferum L'.

**83.** Shri Kapil Sharma, Chemical Examiner was present in the Court. He reiterated that the 'morphine test' and the 'meconic test' are the only two tests available worldwide to establish that the contraband material is derived from 'papaver somniferum L'. As already discussed hereinabove,

prior to enactment of the 1985 Act, it was only the plant 'papaver somniferum L' which was included in the definition of 1878 and 1930 enactments. By virtue of sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act, the same has been retained. However, noticing that there was some material to show that some other species of 'papaver' may also be used for the production of 'opium', the legislature, by an abundant precaution, also added sub-clause (b) in Clause (xvii) of Section 2 of the 1985 Act so as to enable the Central Government to notify such a species from which 'opium' or any 'phenanthrene alkaloid' can be extracted. The legislative intent is clear that the 1985 Act, in addition to retaining the species of 'papaver somniferum L' in the definition of 'opium poppy', enabled the Central Government to include any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' could be extracted. This declaration has to be done by a notification published in the official gazette. The legislative intent is to bring any other species of 'papaver' which can be used for manufacture of 'opium' within the prohibitory and regulatory provisions of the 1985 Act.

**84.** If the view as taken by the High Court is to be accepted, a person who has been found contravening the provisions of the 1985 Act and dealing with a contraband material which has been found in the Chemical Examiner's report to contain 'morphine' and 'meconic acid', would escape the stringent provisions of the 1985 Act. The said could never have been the intention of the legislature. In our view, if the view as taken by the High Court is to be accepted, the same would frustrate the object of the Act and defeat its very purpose.

**85.** In light of the view that we have taken, we do not find it necessary to refer to other judgments of the Gujarat High Court as well as the Himachal Pradesh High Court.

**86.** Insofar as the reliance placed by the High Court of Himachal Pradesh on the judgment of this Court in the case of ***Amarsingh Ramjibhai Barot*** (supra) is concerned, the only question for consideration before this Court was, as to whether the High Court was justified in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more

than the commercial quantity, warranting punishment under Section 21(c) of the 1985 Act. In the said case, the opinion given by the FSL was that it was 'opium' as described in the 1985 Act. The court from the evidence found that the substance recovered from the appellant therein had 2.8% anhydride morphine. The court therefore held that it would amount to 'opium derivative' within the meaning of Section 2(xvi)(e) of the 1985 Act. It was therefore held that, what was recovered from the appellant therein was 'manufactured drug' within the meaning of Section 2(xi) of the 1985 Act. The Court therefore held that the offence proved against the appellant therein clearly fell within Section 21 of the 1985 Act for illicit possession of a 'manufactured drug'. We fail to understand as to how the said judgment could be said to be a proposition for holding that, unless the Chemical Examiner's report establishes that the contraband material was derived from the species of 'papaver somniferum L', conviction under Section 15 of the 1985 Act would not be tenable.

**87.** Insofar as the judgment of this Court in the case of ***Baidyanath Mishra*** (supra), to which a reference has been

made by Shri Parameshwar, is concerned, this Court, in the case of ***Harjit Singh*** (supra), has itself held that the said case was decided under the Opium Act and not under the 1985 Act. It has been held that the chemical analysis of the contraband material is essential to prove a case against the accused under the 1985 Act.

**88.** We are therefore of the considered view that the High Court was not justified in holding that, even after the Chemical Examiner's report establishes that the contraband contains 'meconic acid' and 'morphine', unless it was established that the same was derived from the species of 'papaver somniferum L', conviction under Section 15 of the 1985 Act could not be sustained.

**89.** As already discussed hereinabove, once it is established that the seized material contains 'meconic acid' and 'morphine', it will be sufficient to establish that it is derived from the plant 'papaver somniferum L' as defined in sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act.

**90.** We further find that the High Court was also not justified in observing that the Chemical Examiner's report, in

the alternative, should establish that the seized material is a part of any other species of 'papaver' from which 'opium' or any 'phenanthrene alkaloid' could be extracted and which has been notified by the Central Government as 'opium' for the purpose of the 1985 Act. We fail to understand as to how a Chemical Examiner could be asked whether the seized material was a part of any other species of 'papaver' from which 'opium' or any other 'phenanthrene alkaloid' could be extracted when there is no such species of 'papaver' which has been notified by the Central Government to be 'opium poppy' for the purpose of the 1985 Act.

**91.** In the result, we hold that, once a Chemical Examiner establishes that the seized 'poppy straw' indicates a positive test for the contents of 'morphine' and 'meconic acid', it is sufficient to establish that it is covered by sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act and no further test would be necessary for establishing that the seized material is a part of 'papaver somniferum L'. In other words, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for bringing home the

guilt of the accused under the provisions of Section 15 of the 1985 Act.

**92.** Before we part with the judgment, we must place on record that Shri Parameshwar, learned amicus curiae and Shri Mukerji, learned AAG have taken great pains in researching various scientific study as well as the relevant material at the national and international level. We place on record our deep appreciation for the valuable assistance rendered by both Shri Parameshwar and Shri Mukerji. We must also place on record that Shri Parameshwar has ably placed before us both the sides of the present issue, one from the perspective of the accused and the other from the perspective of the prosecution.

**93.** Insofar as the present appeal is concerned, since the appeal is allowed by the High Court only on the aforesaid ground without considering any other material, we remand the matter to the High Court for consideration afresh in accordance with what has been held by us hereinabove.

**94.** Mr. Neeraj Jain, learned senior counsel appearing for the respondent(s) submits that since the judgment and order of the High Court has been set aside, the respondent(s)-accused would be required to surrender.

**95.** We suspend the sentence till the matter is decided on merits by the High Court.

**96.** The appeal is allowed in the above terms.

**97.** Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

**.....J.**
**[B.R. GAVAI]**

**.....J.**
**[C.T. RAVIKUMAR]**

**NEW DELHI;**
**OCTOBER 20, 2022.**