

Observations And Recommendations Of Working Group Comprising Judicial Officers And Prosecutors

The working group discussed common lacunae in investigations which lead to acquittals in NDPS cases.

Ms. R. Kiran Nath, Special Judge for NDPS cases, presided over the discussion. Shri J.M. Malik, senior most judge deciding cases under NDPS Act, was also on the dais. Shri Satish Aggarwala, Sr. Special Public Prosecutor, Department of Revenue, Union Ministry of Finance, acted as rapporteur.

After detailed discussions the group submitted the report as follows –

- i) Inadequate training of drug law enforcement officers in legal and procedural requirements is the foremost reason for inadequacies and procedural lapses during the searches, seizures and investigations, leading to acquittals. The group felt the need for such training. Investigating officers should also be periodically updated on the latest judgements and amendments in the NDPS Act, 1985. Senior officers of premier drug law enforcement agencies such as NCB, CBN, and CBI should endeavour to educate investigating officers.
- ii) Instances of implication of innocent people in NDPS cases were also noticed in the state of U.P. by some judges.
- iii) Several deficiencies were noticed in investigations the most common of which were-
 - ◆ investigations by unauthorized persons
 - ◆ seizing officer being senior to the investigating officer which casts a doubt on the impartiality of the investigation since the officer will be reluctant to accept that his senior's seizure was not correct
 - ◆ search of a vehicle stationed in a premises without search authorization
 - ◆ female officers are not joined in search of a house where there are females
 - ◆ investigating officers not complying with the mandatory requirements of law
 - ◆ all the officers present at the spot not signing the recovery memo/ panchnama
 - ◆ place of recovery is changed by the prosecution

- ◆ seal on the seized consignment is tampered with
 - ◆ seal is not handed over to the public witnesses
 - ◆ the samples drawn are not the representative samples of the entire quantity;
 - ◆ delay in sending representative samples to the laboratory
 - ◆ test memos are not being sent in a sealed cover
 - ◆ test memos are not drawn at the spot
 - ◆ the case property is not kept in safe custody till its production in the court
 - ◆ test report is not filed alongwith challans and the authorities are not applying for pre-trial disposal of the case properties
 - ◆ registers of malkhanas are not being produced in the court
 - ◆ inadequate evidence to link to consignment to the suspect
- iv) On the issue of whether charges should be framed based on the total quantity of drugs seized or the actual amount of drug contained considering the purity, there was a debate.
- v) The group felt that the enforcement officers are not applying for pre-trial disposal which is essential to prevent diversion and solve storage problems.
- vi) On the issue of accountability for failure in prosecution, the group agreed that the investigating officer should be accountable if the court acquits a person because he is falsely implicated. Bonafide legal and procedural and technical lapses should not form the basis for action against the officers.