

Supreme Court of India

Union Of India vs Mohanlal & Anr on 28 January, 2016

Author: T Thakur

Bench: T.S. Thakur, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.652 OF 2012

Union of India

Appellant

Versus

Mohanlal & Anr.

Respondents

JUDGMENT

T.S. THAKUR, J.

1. When this appeal came up for hearing before us on 11th April, 2012, it was contended by learned counsel for the appellant-Union of India that Standing Order No.1 of 1989 dated 13th June, 1989 which prescribes the procedure to be followed for seizure, sampling, safe keeping and disposal of the seized Drugs, Narcotics and Psychotropic substances is being followed throughout the country. It was also contended that Ministry of Finance, Department of Revenue, Government of India, has in terms of a Circular dated 23rd February, 2011 impressed upon the Chief Secretaries and the concerned police heads of the State Governments to ensure that instructions given and the procedure prescribed in the Standing Order aforementioned was strictly adhered to. These submissions notwithstanding, doubts about the procedure being actually followed persisted. Pilferage of the contraband goods and their return to the market place for circulation being a major hazard, this Court appointed Mr. Ajit Kumar Sinha, Senior Advocate, as Amicus Curiae, with a view to making a realistic review of the procedure for search, disposal or destruction of the narcotics and the remedial steps that need to be taken to plug the loopholes, if any.

2. On 3rd July, 2012 this Court after hearing the Amicus Curiae prima facie came to the conclusion that the procedure prescribed for the destruction of the contraband seized in different States was not being followed resulting in a very piquant situation in which accumulation of huge quantities of the seized drugs and narcotics has increased manifold the chances of their pilferage for re-circulation in the market. This Court also noted a report published in the timesofindia.indiatimes.com under the heading Bathindas police stores bursting at seams with seized narcotics from which it appeared that large quantities of seized drugs had accumulated over the years including opium, poppy husk, charas etc. apart from modern narcotic substances. The report suggested that 39 lakhs sedatives and narcotic tablets, 1.10 lakhs capsules, over 21,000 drug syrups and 1828 sedative injections apart from 8 kgs. of smack and 84 kgs. of ganja were awaiting

disposal in Bathinda Police stores alone. The position was, according to Mr. Sinha, no better in other States especially those situate along the international borders. It was argued by the Amicus Curiae that without proper data from the authorities concerned, it was not possible to take stock of the magnitude of the problem no matter challenges posed by rampant drug abuse had acquired alarming proportions affecting the youth, some of whom are driven to commission of crimes on account of deleterious effects of drug abuse.

3. It was in the above backdrop that by an order dated 3rd July, 2012 passed in Criminal Appeal No.652 of 2012 this Court directed collection of information from the police heads of each one of the States through the Chief Secretaries concerned in regard to seizure, storage, disposal and destruction of the seized contraband and judicial supervision over the same. Specific queries were formulated in the order passed by us with a direction to the Chief Secretaries of the States concerned to serve the same upon the Directors General of Police for a report to be forwarded through the Registrars General of the High Courts of the States concerned who were appointed Nodal Officers for that purpose. Registrars General were also asked to independently secure from the District and Sessions Judges concerned in their respective States, answers to the queries specified under the head Judicial Supervision. Chiefs of Central Government Agencies viz. Narcotics Control Bureau, Central Bureau of Narcotics, Directorate General of Revenue Intelligence and Commissionerates of Customs & Central Excise including the Indian Coast Guard were directed to issue similar queries to the officers concerned and to submit their respective reports detailing the information required in terms of the orders passed by this Court. The queries raised by this Court were in the following words:

12.1. Seizure

(i) What narcotic drugs and psychotropic substances (natural and synthetic) have been seized in the last 10 years and in what quantity? Provide yearwise and districtwise details of the seizure made by the relevant authority.

(ii) What are the steps, if any, taken by the seizing authorities to prevent damage, loss and pilferage of the narcotic drugs and psychotropic substances (natural and synthetic) during seizure/transit?

(iii) What are the circulars/notifications/directions/guidelines, if any, issued to competent officers to follow any specific procedure in regard to seizure of contrabands, their storage and destruction? Copies of the same be attached to the report.

12.2. Storage

(i) Is there any specified/notified store for storage of the seized contraband in a State, if so, is the storage space available in each district or taluka?

(ii) If a store/storage space is not available in each district or taluka, where is the contraband sent for storage purposes? Under what conditions is withdrawal of the contraband permissible and whether a court order is obtained for such withdrawal?

(iii) What are the steps taken at the time of storage to determine the nature and quantity of the substance being stored and what are the measures taken to prevent substitution and pilferage from the stores?

(iv) Is there any check stock register maintained at the site of storage and if so, by whom? Is there any periodical check of such register? If so, by whom? Is any record regarding such periodic inspection maintained and in what form?

(v) What is the condition of the storage facilities at present? Is there any shortage of space or any other infrastructure lacking? What steps have been taken or are being taken to remove the deficiencies, if any?

(vi) Have any circulars/notifications/directions/guidelines been issued to competent officers for care and caution to be exercised during storage? If so, a copy of the same be produced.

12.3. Disposal/Destruction

(i) What narcotic drugs and psychotropic substances (natural and synthetic) have been destroyed in the last 10 years and in what quantity? Provide yearwise and districtwise details of the destruction made by the relevant authority. If no destruction has taken place, the reason therefor.

(ii) Who is authorised to apply for permission of the court to destroy the seized contraband? Has there been any failure or dereliction in making such applications? Whether any person having technical knowledge of narcotic drugs and psychotropic substances (natural and synthetic) is associated with the actual process of destruction of the contraband?

(iii) Was any action taken against the person who should have applied for permission to destroy the drugs or should have destroyed and did not do so?

(iv) What are the steps taken at the time of destruction to determine the nature and quantity of the substance being destroyed?

(v) What are the steps taken by competent authorities to prevent damage, loss, pilferage and tampering/substitution of the narcotic drugs and psychotropic substances (natural and synthetic) during transit from point of storage to point of destruction?

(vi) Is there any specified facility for destruction of contraband in the State? If so, a list of such facilities along with location and details of maintenance, conditions and supervisory bodies be provided.

(vii) If a facility is not available, where is the contraband sent for destruction purposes? Under whose supervision and what is the entire procedure thereof?

(viii) Is any record, electronic or otherwise prepared at the site of destruction of the contraband and by whom? Is there any periodical check of such record? What are the ranks/designation of the supervising officers charged with keeping a check on the same?

12.4. Judicial supervision

(i) Is any inspection done by the District and Sessions Judge of the store where the seized drugs are kept? If drugs are lying in the store, has the Sessions Judge taken steps to have them destroyed?

(ii) Is any report of the inspection conducted, submitted to the Administrative Judge of the High Court or the Registry of the High Court? If so, has any action on the subject being taken for timely inspection and destruction of the drugs?

(iii) Are there any pending applications for destruction of drugs in the district concerned, if so, what is the reason for the delay in the disposal of such application?

(iv) What level officers including the judicial officers are associated with the process of destruction?

(v) At what stages are the Magistrates/judicial officers/any other officer of the court associated with seizure/storage/destruction of drugs?

(vi) Are there any rules framed by the Court regarding its supervisory role in enforcement of the NDPS Act as regards seizure/storage/destruction of drugs?

(vii) What is the average time for completion of trial of NDPS matters?

4. In compliance with the above directions, reports have been submitted by all the States except the States of Arunachal Pradesh, Jammu and Kashmir, Dadar & Nagar Haveli, Lakshadweep, Nagaland and Pondicherry. From a perusal of the reports so received the position that emerges in regard to disposal/destruction of narcotic drugs and psychotropic substance qua each State for the last 10 years may be summarised as under:

DETAILS OF SEIZURE AND DISPOSAL OF DRUGS (STATEWISE) ANDHRA PRADESH |Item |Total Quantity |Total Quantity |Difference | | |Seized (In 10 |Destroyed (in 10 | | | |years) |years) | | |Ganja |2,20,977.191 Kg |3910.70 Kg |217066.491 kg | | | |(98.23%) | |Opium |22.925 kg |0 |22.925 Kg | | | |(100%) | |Charas |6.5 kg |0 |6.5 kg (100%) | |Cocaine |851.096 kg |0 |851.096 kg | | | |(100%) | |Others |85.125 kg + 103 |0 | | |Capsules + 81 | | | |Injections 26 Amp | | |

2. ASSAM (The Information pertains only to the period of 2010-2012) |Item |Total Quantity |Total Quantity |Difference | | |Seized (In 10 |Destroyed (in 10 | | | |years) |years) | | |Ganja |203.54 Kg |136 Kg |67.54 (33.18%) | |Heroin |.614 kg |0 |.214 Kg | | | |(34.853%) | |Opium |30 gms |0 |30 gms (100%) | |Others |755662 |41472 Nos. |714190 Nos. | | | |(94.5%) |

3. BIHAR |Item |Total Quantity |Total Quantity |Difference | | |Seized (In 10 |Destroyed (in 10 | | |
|years) |years) | | |Ganja |45 Kg |0 |45 kg | |Heroin |3.74 kg |0 |3.74 kg | |Charas |48.853 kg |0
|48.853 kg | |Poppy |100 kgs |0 |100 kgs | |Straws | | | |Methqualon|1676 kgs |0 |1676 kgs | |e | | |
| Note:- No destruction of narcotic drugs and psychotropic substances have taken place at Patna
zonal unit.

4. CHHATTISGARH

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	1,03,622.140 kg	3281.570 kg	1,00,340.57 (96.77%)
Cannabis Plants	52478 (Nos)	380 (Nos)	52098 (Nos) (92.7%)
Brown Sugar	3.120 kg	0	3.129 kg (100%)
Opium	1.460 kg	0	1.460 kg (100%)
Opium Poppy Plant	1558 pieces	0	1558 pieces (100%)
Green Opium Plant	3600 kg	0	3600 kg (100%)

5. CUSTOMS AND CENTRAL EXCISE

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Opium	367.007 kg	658.525 kg	Destroyed more than seized
Morphine	58.393 kg	190 kg + 88930 Pcs Injections	58.203 kg (99.6%)
Heroin	1658.099 kg	739.687 kg	918.412 kg (55.3%)
Ganja	484124.056 kg	8,43,008.559 kg	Destroyed more than seized
Hashish	77350.076 kg	12298.578 kg	Destroyed more than seized
Cocaine	640.569 kg	0	640.569 kg (100%)

6. CHANDIGARH

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
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	years)	years)	
Contraband	By relevant	900.179 Kgs	2305.444 Kgs
	authorities		(71%)
	3205.623 Kgs		
Morphine	58.393 kg	190kg + 88930 Pcs	58.203 kg
		Injections	(99.6%)
Heroin	1658.099 kg	739.687 kg	918.412 kg
			(55.3%)
Ganja	484124.056 kg	8,43,008.559 kg	Destroyed more
			than seized
Hashish	77350.076 kg	12298.578 kg	Destroyed more
			than seized
Cocaine	640.569 kg	0	640.569 kg
			(100%)

7. DELHI

Delhi has provided two responses. One response has been provided by the NCB, Delhi and the other by the police heads of each of the district.

The response by NCB, Delhi is as follows :-

Item	Total Quantity	Total Quantity	Difference
	Seized (In 10	Destroyed (in 10	
	years)	years)	
Contraband	8891.8373	680.376 kg	8211.4613 kg
			(92.34%)

The Response by the police heads are as follows:-

Item	Total Quantity	Total Quantity	Difference
	Seized (In 10	Destroyed (in 10	
	years)	years)	
	By relevant		
	authorities		
Contraband	52944.577 kg	32443.456 kg	20500.601
(Hashish,			(38.72%)
Cocaine,			
Ganja,			
Heroin			
etc.)			
Contrabands	1020669	0	1020669 (100%)
(Chemical			
Substances			

in Tablets,			
Injections)			

8. DAMAN AND DIU

The UT Daman and Diu has informed the Total quantity by way of a detailed chart:

Item	Total Quantity Seized (In 10 years) By relevant authorities	Total Quantity Destroyed (in 10 years)	Difference
Contraband	25.827 kgs	000 kgs	25.827 Kgs (100%)

9. DIRECTORATE OF REVENUE INTELLIGENCE

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference By relevant authorities
Contraband	174185.687 kg	2859.448 Kg	171326.239 (98.3%)

10. GUJARAT The Response of the state is divided into two parts.

One has been provided by the office of the Ministry of Home Affairs.

As per the said response the total amount of contraband seized in 10 years are 28340.047 Kg. No division of the type has been provided.

The total destruction in the last 10 years however is only 132.375 Kg The total amount of Contraband still in custody of the authorities is 28207.672 Kgs, i.e. 99.53% of the seized amount.

The response of the NCB Zonal Unit is as follows:

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Charas	1421.14 kg	15.056 kgs	1406.084 kg (98.9%)
Opium	17.505 kg	0	17.505 kg (100%)
Brown Sugar	2.03 kg	0	2.03 kg (100%)
Heroin	3.066 kg	0 (981 gms of Heroin was destroyed in 2000, however all the seizures have been made post 2003)	3.066 kg (100%)
Others	3766.126 kg + 299	525 kgs	3241.126 kgs

	ltrs. + 1022		(86.05%) + 229
	Tablets		ltrs (100%) +
			1022 Tablets
			(100%)

11. GOA

The UT Chandigarh has informed the Total quantity by way of a detailed chart:

Item	Total Quantity Seized (In 10 years) By relevant authorities	Total Quantity Destroyed (in 10 years)	Difference
Contraband	548.746 kgs.	000 kgs	548.7476 kgs
			(100%)

12. HARYANA

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	2604.077 kg	521.133 kg	2082.944 kg
			(79%)
Charas	7252.513 kg	533.46 kg	6719.053 kg
			(92.64%)
Opium	1086.387 kg	1972.860	Destroyed more
			than seized
Smack	8200.00 kg	4169.919 kg	4030.081 kg
			(49.14%)
Heroin	1.046 kg	1.300 kg	Destroyed more
			than seized
Brown Sugar	2.001 kg	1.003 kg	998 kg
			(49.87%)
Cocaine	.325 kg	0	.325 kg (100%)

13. HIMACHAL PRADESH

The State of Himachal Pradesh has informed the Total quantity by way of a detailed chart:

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Contraband	17026.714	1856.913	15169.801
			(89.09%)

14. JHARKHAND

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	1793.381 kg	0 (area of cultivation has been destroyed)	1793.381 kg (100%)
Opium	360.59 kg	0	360.59 kg (100%)
Brown Sugar	1.576 kg	0	1.576 kg (100%)
Heroine	546 kg	0	546 kg (100%)

15. KERALA

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	7588.543 Kg	2740.926 kg	4847.617 kg (63.88%)
Heroine	.536 kg	0	.536 kg (100%)
Hashish	12.368 kg	0	12.368 (100%)
Charas	.063 kg	0	.063 kg (100%)
Brown Sugar	8.432 kg	12.058 kg	Destroyed more than seized
Opium	23.697 kg	0	23.697 kg (100%)

16. KARNATAKA

The state of Karnataka divided its response in two parts. One is seizure by Police and the Other is seizure by NCB

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Contraband By NCB	366.838 Kgs	366.838 Kgs	(100%)
Contraband By relevant authorities	12140.592	15151.041	By relevant authorities (55%)
			27291.633 Kgs

17. MAHARASHTRA

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	1,14,082 kg	8750 kg	1,14,074 kg (92.33%)
Heroin	654 kg	228 kg	426 kg (65.13%)
Charas	2364.90 kg	471.735	1893.165 (80.05%)
Opium	613.044 kg	47.135 kg	565.909 kg (92.31%)
Cocaine	11.049 kg	0 kg	11.049 kg (100%)

18. MANIPUR

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Heroin	37.534 kg.	12.498 kg	25.036 kg (66.072%)
Ganja	45343.25 kg	41963.389 kg	3379.861 kg (Kindly refer to the Note) (7.45%)
Opium	233.985 kg	0	233.985 kg (100%)
Hashish	3.05 kg	0	3.05 kg (100%)

Note: The Total amount of Ganja seized post 2005 was 25913.225 kgs and the same is still lying with the authorities since the last pretrial disposal in 2005.

19. MADHYA PRADESH Madhya Pradesh has divided its response in two parts. One is seizure by Police and the other is seizure by NCB.

Item	Total Quantity	Total Quantity	Difference
	Seized (In 10	Destroyed (in 10	In Kgs
	years)	years)	
	In Kgs	In Kgs	
Contraband	By Police-	By Police	By Police
	804376.528	61384.805	-742991.723
			Kgs (92%)
	BY NCB		Destroyed more
	348 kg		than seized

20. Ministry of Home Affairs NCB

Item	Total Quantity	Total Quantity	Difference
	Seized (In 10	Destroyed (in 10	
	years)	years)	
	By relevant		
	authorities		
		4476.482 kgs	
	5344.12 Kgs.		867.638 (16%)

21. ORISSA

Orissa has divided its response in two parts. One is seizure by Police and the Other is seizure by Excise Officials.

Item	Total Quantity	Total Quantity	Difference
	Seized (In 10	Destroyed (in 10	
	years)	years)	
	By Police	0.000	By Police-
	88241.741 Kgs		88241.741 Kgs
			(100%)
		0.000	
	By Excise		By Excise
	34520.854 Kgs		34520.854 Kgs
	(100%)		(100%)

22. PUNJAB

Item	Total Quantity	Total Quantity	Difference
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	Seized (In 10 years)	Destroyed (in 10 years)	
Poppy Husk	8,93,948.452 kg	4,00,678.069 kg	4,93,270.383 kg (55.17%)
Opium	4936.031 kg	965.818 kg	3970.213 kg (80.43%)
Smack	20045.293 kg	104.631 kg	19940.662 (99.47%)

23. RAJASTHAN

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Brown Sugar	146.996 kg	23.381 kg	123.615 kg (84.094%)
Heroine	173.216 kg	3.25 kg	169.966 kg (98.12%)
Smack	275.246 kg	82.423 kg	192.823 kg (70.05%)
Opium	6687.081 kg	2006.745 kg	4680.335 kg (69.99%)
Charas	935.602 kg	1192.309	Destroyed more than seized
Ganja	176289.677 kg	2578.712 kg	174250.965 kg (98.84%)
Poppy Straw	99684.05 kgs	1,34,652.55 kg	Destroyed more than seized.

24. SIKKIM

Item	Total Quantity Seized (In 10 years) By relevant authorities	Total Quantity Destroyed (in 10 years)	Difference
N-10 Capsure	9156	**	9156 (100%)
Spasmo Proxyvon Capsule	277367	**	277367 (100%)
Corex/Phensidylerecodex	3033	**	3033 (100%)
Others		**	203.92 gms.

** The State Government of Sikkim has replied that the destruction is

done as per the orders of the Trial Court on the conclusion of Trial. However, no details related to disposal has been provided.

25. TAMIL NADU

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja (Dry + Green)	656778 kg	19366.98 kg	637411.02 jg (97.051%)
Charas	13 kg	1 kg	12 kg (92.30%)
Heroin	66.42 kg	66.425 kg	0
Cocaine	1 kg	15.4 kg	Destroyed more than seized
Brown Sugar	0.015 kg	0	0.015 kg (100%)
Opium	30.4 kg	1.738 kg	29.262 kg (96.25%)
Hash Oil	10 kg	1 kg	9 kg (90%)
Tidigesic inj.	13627 vials	4095 vials	9532 vials (69.94%)
Morphine	112 amps	0	112 amps (100%)
Bosikka	9	0	9 (100%)
Diazepam	9.085 kg + 2706 vials	4.51 (kg or vial not sure)	
Poppy	246.75 kg	125.05 kg	121.7 kg (49.32%)
Cap/Straws			
Avil	350 tabs + 55 vials	0	350 tabs + 55 vials

26. TRIPURA

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Ganja	9178.8	2642.5 kg	6536.3 kg (71.21%)
Ganja Dust	436 kg	87 kgs	349 kgs (80.04%)

27. UTTAR PRADESH

There is huge discrepancy between the Quantity seized and the Quantity destroyed.

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Opium	1278.016 kg	198.025 kg	1079.99 kg (84.5%)
Smack	455.543 kg	244.443 kg	211.1 kg (46.3%)
Heroin	503.664 kg	13.759 kg	489.905 kg (97.2%)
Ganja	92525.859	11,820.191 kg	80705.668 kg (87.22%)

Charas	9099.432 kg	2234.481 kg	6864.951 kg
			(75.44%)
Intoxicatin	3658.065 kg	1035.275 kg	2622.79 Kg
g Powder			(71.69%)
(Cocaine)			
Brown Sugar	51.455 kg	1.1 kg	51.355 kg
			(99.8%)
Posta Drug	16224.591 kg	5081.988 kg	11,142.603 kg
			(68.67%)

28. UTTARAKHAND

Item	Total Quantity Seized (In 10 years)	Total Quantity Destroyed (in 10 years)	Difference
Charas	1252.091 kg	330.459 kg	921.632 kg
			(73.60%)
Doda	6783.765 kg	330.459 kg	6453.306
			(95.12%)
Opium	28.899 kg	1.859 kg	27.04 kg
			(93.567%)
Heroin	154.454 kg	0	154.454 kg
			(100%)
Intoxicatin	22413 Nos	4668 Nos.	17745 Nos
g Tablets			(79.17%)
Ganja	1121.740 kg	508.300 kg	613.44 kg
			(54.686%)
Smack	8.761 kg + 1022	0.432 kg + 530	8.329 kg
	packets	Packets	(95.06%) + 492
			Packets
			(48.140%)
Injection	1924 Nos	5 Nos.	1919 Nos
			(99.74%)
Brown Sugar	.389 kg	0	.389 kg (100%)

29. WEST BENGAL

Item	Total Quantity Seized (In 10 years) By relevant authorities	Total Quantity Destroyed (in 10 years)	Difference
Contraband	88520.3317 kg	0	88520.3317 kg
			(100%)

Note:- West Bengal has stated that it does not have any immediate records available of destruction.

5. In regard to the storage of NDPS substances, the State Governments and the Central Agencies have furnished information which the learned Amicus Curiae has tabulated as under:

Annexure D |Delhi Govt. |Gujarat Govt. |Guwahati Govt. | |Yes, specified store |No specific store. |NBC Guwahati Zonal Unit| |for storage of the | |is running from a | |seized contraband in | |rented house and one | |Delhi Zonal Unit. | |secured room is | | | |earmarked as storage | | | |place. | |Imphal Govt. |Mizoram Govt. |Tripura Govt. | |Stored in godown of NCB|No specific store |No specified store. | |-1 after sealing. | | | |Meghalaya Govt. |Uttar Pradesh Govt. |Maharashtra Govt., Goa | | |and Daman Diu | |Excise Malkhana is |UP has no specific |No specific store in | |generally used to store|place for storage of |Maharashtra for | |contrabands. |the narcotic drugs. |storage. | |All district Excise | |In Goa: Malakhana at | |office have their own | |Police Station. | |Malkhana rooms. | |Daman & Diu and Dadar & | | | |Nagar Haveli: Kept in | | | |Malkhana Police | | | |Station. Then sent to | | | |storage of competent | | | |Court after chargesheet| | | |is filed. | |Himachal Pradesh Govt. |Chhattisgarh Govt. |Andhra Pradesh Govt. | |No specified area. |No separate storage. |No specified area. | |Rajasthan Govt. |Sikkim Govt. |Uttarakhand Govt. | |No specific store. |No storage. |No specific store. | |Jharkhand Govt. |Kerala Govt. |Karnataka Govt. | |No specific store. |No specific storage. |No notified store. | |Madhya Pradesh Govt. |Orissa Govt. |Bihar Govt. | |Yes, NCB Zonal Unit |No specific store. |Patna Zonal Unit of NCB| |Indore ahs well-secured| |has specified room. | |specific maalkhana | |Withdrawal only under | | |(Submissions by NCB | |order of the Court. | |Indore Zonal unit) | | | |No specific Store for | | | |storage after seizure | | | |by Police Station. | | | |(Submissions by Police | | | |Heads) | | | |Punjab Govt. |Haryana Govt. |Chandigarh Govt. | |No specified store. |Malkhana in all police |A Room called Malkhana | | |stations for storage of|is specifically | |contraband Narcotics |designated to keep the | | |Drugs and Psychotropic |seized contrabands. | |Substances. | |Tamil Nadu |Customs and Central |Directorate of Revenue | |Excise |Intelligence | |No Specific storage |No specific storage is |No specific store of | |space. |available |its own. | |NCB, Jodhpur Zone |NCB, Chandigarh Zone |West Bengal | |Yes, But no sub-zone |A separate room has |The seized goods are | |available. |been specified for |stored in Police | |storage of seized |Station Malkhana under | |contraband. |the charge of a | | | |designated Police | | | |Officer and supervision| | | |of officer in charge of| | | |Police Station. |

6. Similarly, in answer to the query as to the steps taken at the time of storage to determine the nature and the quantity of the substance being stored and measures to prevent substitution and/or pilferage from the stores, the State Governments have sent their replies which too have been summarised by the Amicus Curiae in the following words:

ANNEXURE-F iii. What are the steps taken at the time of storage to determine the nature and quantity of the substance being store and measures to prevent substitution and pilferage from stores?

|Delhi |Gujarat |Guwahati |Imphal |Mizoram |Tripura | |Govt. |Govt. |Govt. |Govt. |Govt. |Govt. | |Proper |Writer |Complete |Complete |Utmost care |Malkhana | |entry in |head of |process of|process of|in weighing |officer | |malkhana |Police |classifica|classifica|and |incharge | |register |station |tion and |tion and |measurements|carefully | |and |maintains |weighing |weighing |by |keeps the | |malkhana |muddamal |of drugs |of drugs |officer-in-c|contraband| |incharge |register |along with|along with|harge. |s in the | |and |which has |measures |measures |@page 101 of|malkhana | |properly |complete |of |of |submissions |after | |locked |details.

prevention|prevention|by Mizoram |maintainin| |and |All |of |of |Govt. |g | |guarded
 |subsequent|pilferage |pilferage | |register. | |@Pg 10 of|withdrawal|mentioned |mentioned |
 |@Pg.No.3 | |Delhi |and |at |at | |of | |Govt. |redisposit|@ Pg.No.52|@ Pg. No. | |submission|
 |submissio|ion are |of |74 of | |by Tripura| |n |also |Guwahati |Imphal | |Govt. | | |reflected |Govt.
 |Govt. | | | |in the |submission|submission| | | |muddamal | | | | |register | | | | |@Pg.2 of | |
 | | | |Gujarat | | | | |Govt. | | | | |submission| | | | |Meghalaya|Uttar |Maharashtr|Himachal
 |Chhattisgar|Andhra | |Govt. |Pradesh |a Govt., |Pradesh |h Govt. |Pradesh | | |Govt. |Goa and
 |Govt. | |Govt. | | |Daman Diu. | | | |General |After |Contraband|NDPS is |Details of |During the |
 |duty of |Seizure |is packed |seized by |all steps |storage the| |detecting|the |and kept |investigat|to
 |details are| |officer |concerned |safe with |ing |determine |entered in | |to weigh,|drug is
 |Muddemal |officer. |the nature |storage | |seal the |weighed. |Clerk in |After |and |room |
 |contraban |separate |samples |quantity of|register. | |d with |Subsequent|cupboard. |are
 taken,|the |Store room | |signature|ly a |@ Pg.6. |the same |substance |is duly | |s of |sample is | |is
 seized |being store|sealed and | |civilian |taken out |Goa: |by I.O. |and |armed | |witnesses|of the
 bag|Contraband|affixing |measures to|guards/stat | |with |and both |packed and|his own |prevent
 |ion watch | |proper |are |sealed at |seal and |substitutio|are posted. | |entry in |weighed |the spot
 |later |n and | | |register |separately|of |resealed |pilferage | | |and lock |. |seizure. |by SHO |from
 stores|@ pg.no. 2 | |it. | |Entry in |before |elaborated |of A.P. | |@pg.7 |Both the |Mudamma,
 |consigning|@ Pg.No. 3 |Govt. | |Annex-A-2|sample and|register |it to the |of |submission | |of
 |main stock|to show |safe |submissions| | |Meghalaya|are |chain of |custody in|by | | |Govt.
 |wrapped in|movements |police |Chhattisgar| | |Submissio|a piece of|and its |malkhana |h Govt. | |
 |n/ |cloth and |custody. |of the | | |-----|are |@ pg. 8. |Police | | |Acc. To |sealed. | |Station. | |
 | |Report of |Daman & | | | |Comm. Of |The sample|Diu and |@ Pg.No.3 | | |Customs @|is sent
Dadar &	of HP				Pg.67:	for	Nagar	Govt.			Stored in	forensic	Haveli:	submission			
Central	testing	there are	.				Godown in	and the	very				safes and	main	remote		
vaults	packed is	chances of					with	sealed and	substituti				double	kept in	on/		
locking	the	pilferage				system	malkhana.	as the				under	stored				command
Pg.6 of	goods are				of a	submission	subject to				Gazetted	s by U.P.	periodical				
Officer.	Govt.	inspection						.					Page 9 of				
Rajasthan	Sikkim	Uttarakhand	Jharkhand	Kerala	Karnataka		Govt.	Govt.	Govt.	Govt.	Govt.						
Govt.		No	NDPS is		NDPS	Material	During		specific	packed		sample is	objects	recovery a			
	answer.	and		sent to	is	pinch of the		However	sealed		forensic	sealed	substance is				
packing	under		laboratory	and	tested with		resources	stamp of		. For	packed	the help of					
for	IO and		preventing	properly	field drug		storage	nature		substituti	.	test kit for		are used			
and		on,		an		according	quantity		details	Page 9	indicative		to	recorded		entered	of the
test. After		quantity	in		into	Response	positive		and nature	presence		station		indicative			
of the	of		diary of		result, the		contraband	individua		the		officer		.		concerned	
makes			witnesses		police		detailed		@ Pg.No. 2	.		station.		inventory.		of	Page 11
Complete		The seized		submission	of the		safety		goods are		by	Response.		measures			
stored in		Rajasthan			mentioned		the		Govt.			in Annex-3		departmental			
godown or				govt.		the judicial				submission		godown and					.
representati				Page 5 of		ve sample is				the		sent to the				Response	
			for chemical					analysis.					@ pg. 10 of				
 Karnataka | | | | |Govt. | |Madhya |Orissa |Bihar |Punjab |Haryana |Chandigarh | |Pradesh |Govt.

|Govt. |Govt. |Govt. |Govt. | |Govt. | | | | | |By NCB |Seized |Seized |Police |Weekly and|Seized |
|Indore |drugs are |drugs are |officials |fortnightl|contraband | |Zonal |sealed in |sealed
and|deployed |y reports |is safely | |Office. |such a |produced |at all |obtained |kept in | |Seized
|manner as |before the|NDPS |from all |Malkhana | |contraband|to |Court and |Maalkhana
|concerned |under lock. | |wrapped in|minimize |then |stores. |regarding | | |transparen|the |stored
in |Case |seized/ |No more | |t |chances of|Maalkhana |property |storage of|details | |polythene
|pilferage. |after |register |NDPS. |mentioned. | |and then | |entry in |No. 19 is |Stock | | |in white
|After |registers. |maintained|Register | |cloth |producing | |. |is | | |before |the seized|Pg. No. 3
|Procedure |maintained| | |sealing |goods with|of |as per and|by field | | |and
|permission|submission|Punjab |units and | | |signing |of court |by Bihar |Police |periodical| | |it.
|the drugs |Govt. |rules |checking | | |Quality |are | |1934. |is done. | | |and amount|deposited |
|Inspection| | |of seized |in | |by gazette|@ pg. 121 | | |drug is |maalkhana | |officers. |of | | |also
|in sealed | |@ pg.no. |submission| | |mentioned |condition | |16 and 17 |of Haryana| | |in the |with
| |of |Govt. | | |packet. |proper | |submission| | | |@ Pg. 5 of|entry and | |by Punjab | | |
|submission|under the | |Govt. | | |s by M.P. |custody of| | | |Govt. |Maalkhana | | | | |
|Officer. | | | | |By police | | | | |heads of |Page 2 and| | | | |districts:|3 of the | | | | |A seizure
|Response. | | | | |memo is | | | | |again | | | | |prepared | | | | |u/s 55 of | | | | |NDPS Act
| | | | |at the | | | | |time of | | | | |storage in| | | | |the police| | | | |station | | | | |
|malkhana | | | | |and sealed| | | | |by Station| | | | |House | | | | |Officer. | | | | |
|Necessary | | | | |entries | | | | |are made | | | | |in the | | | | |Rojnamcha | | | | |and
seized| | | | |property | | | | |register | | | | |maintained| | | | |in the | | | | |police | | | | |
| |station. | | | | |At page 4 | | | | |of the | | | | |Response. | | | | |Tamil Nadu |Directorate
|NCB Zonal |NCB Zonal |Customs and| | | |of Revenue |Officer, |Office, |Central | | |Intelligence
|Jodhpur |Chandigarh |Excise | | |No such |The sealed |As per |The seized |The seized | | |instance
|contained |Government |goods are |contraband | | |has arisen. |containing |of India |stored lot |is |
| | |the seized |Notificatio|wise and |deposited | | |goods is |n, circular|stored |in the | | |handed
over |1/89 page 3|under |godown/ | | | |to Custodian |of the |proper lock|malkhana on| | |under
proper |Response. |and key |the basis | | | |documentation| |under the |of the | | | |. The |
|supervision|particulars| | |inventory, | |of ITBP |mentioned | | |seizure memo |Guard. No |in
the | | |as well as | |one other |seizure | | |the paper | |than the |memo/ | | |seals on the |store
in |panchnama. | | |sealed |charge is |Proper and | | | |container are| |authorized |secured | | |
duly signed		to enter	packing and				by the panch		the store.	sealing of			witnesses,																
the			accused and		Page 6 of	contraband				seizing		the	ensures its			officer. The													
Response.	safety.			custodian are			Page 11 of			responsible		the			for		Response.												
		appropriate				action to				prevent				substitution				and											
pilferage.				West Bengal					The seized					goods are					packed										
labeled and					sealed by					the Officer					and are					handed over									
to the					officer in					charge with					copy of					seizure					list.				
		Details are					also					incorporate					d in the					Malkhana							
Register					having					counter					signed of					dealing					officer.				

7. The reports submitted by the State Governments and the Central Agencies further claim that stock registers maintained at the storage sites are periodically checked by the staff mentioned in the

reports. Another question that was asked from the State Governments and the Central Agency relates to the condition of the storage facilities, shortage of storage facilities, if any, and whether any steps have been taken or are being taken to remove the deficiencies. Answers to those queries suggest that no proper storage facilities are available in most of the States. For instance, in Gujarat no special storage facility is available for keeping the contraband, which is, therefore, stored in general muddamal room. In Assam the NBC Guwahati Zonal Unit is said to be running from a rented house and one secured room is earmarked for storage with triple locking system under the supervision of the Superintendent. In Imphal, the store room is overflowing with contraband. Since there is shortage of space, pre-trial disposal process has been initiated to decrease congestion in godowns. Although Mizoram Government claims that there is no lack of storage facility, no information as to any specific storage facility being earmarked for the purpose has been provided. In Tripura the enforcement branch is said to be maintaining the malkhana used for storage of contrabands. In Himachal Pradesh there is no storage facility except an old building used for the purpose, while in Chhattisgarh the storage facility is satisfactory but not sufficient for bulk storage. Similarly, Rajasthan has scarcity of storage facility. Jharkhand has no separate storage facility at all whereas Kerala has satisfactory storage facilities only in some of the districts. In Orissa and Bihar the storage facilities are totally insufficient and unsatisfactory. States of Haryana, Madhya Pradesh, Goa, Daman Diu and Dadar & Nagar Haveli and Andhra Pradesh claim to have no problems with storage facility while Tamil Nadu does not have any separate storage.

8. Directorate of Revenue Intelligence has not provided any information while NCB Zonal Office, Jodhpur has no shortage of space. NCB Zonal Office, Chandigarh has reported insufficiency of space and has started the process for construction of a specified storage facility. Customs and Central Excise Authority has reported that their godown is full and no more space is available.

9. In answer to the question as to who is authorised to apply to the Court to destroy the seized contraband and whether there has been any failure or dereliction in making such applications and whether any person having technical knowledge of narcotic drugs and psychotropic substance (natural and synthetic) is associated with the process of destruction of the contraband, the reply submitted by the State Governments suggest that different persons in different States have been authorised to make such applications to the Courts concerned except in Tripura where no particular person is authorised. In some cases Officer-in-charge of the Police Station has been authorised while in others the I.O. is also empowered to apply for permission to destroy the contraband. In answer to the question whether any action has been taken against anyone who should have applied for permission to destroy the narcotics but had not done so, State Governments have all answered in the negative implying thereby that either no dereliction of duty has occurred on the part of any officer competent to apply for destruction or no action has been taken for any such dereliction.

10. Similarly, regarding the steps taken at the time of destruction to determine the nature and quantity of the substance being destroyed, the reports submitted by the State Governments give varying answers. There is no uniformity in the procedure adopted by those associated or in charge of the process of destruction. The reports suggest as if adequate steps are taken to prevent damage, loss, pilferage and tampering/substitution of the narcotic drugs and psychotropic substances from the point of search to the point of destruction but there is no uniformity or standard procedure

prescribed or followed in that regard. Having said that we must mention that we are in these proceedings concerned with the following three issues only for the present:

Seizure and sampling of the Narcotic drugs and Psychotropic substances their storage and their destruction
Seizure and sampling:

11. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government have in exercise of that power issued Standing Order No. 1/89 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10.05.2007 and the other dated 16.01.2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of the Standing Order 1/89 states that samples must be taken from the seized contrabands on the spot at the time of recovery itself. It reads:

2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot. Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

12. Section 52A as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

Section 52A : Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) When an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

13. It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs (b) or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with

sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.

14. Mr. Sinha, learned Amicus, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.

STORAGE:

15. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer in charge of a Police Station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as Standing Order No.1/89 has made specific provisions in regard to the

same. Section III of the said Order deals with Receipt of Drugs in Godowns and Procedure which inter alia provides that all drugs shall invariably be stored in safes and vaults provided with double locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts etc. We may usefully extract paras 3.2 to 3.9 comprising Section III supra at this stage for ready reference:

3.2. All drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically, designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts etc. 3.3 Such godowns, as a matter of rule, shall be placed under the over-all supervision and charge of a Gazetted Officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS Crime No. as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total no. of packages/containers etc. 3.4 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure-I), shall hand acknowledged over such to the Investigation Officer of the case along with the case dossiers for further proceedings.

3.5 The officer-in-charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case-wise and lot-wise) for quick retrieval etc. 3.6 The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure-II.

3.7 It shall be incumbent upon the Inspecting Officers of the various Departments mentioned at Annexure II to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The Inspecting Officers should record their remarks/observations against Col. 15 of the Format at Annexure-II.

3.8 The Heads of the respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

3.9 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of Section 52A of the Act. It is evident from a plain reading of para 3.2 (supra) that storage of all drugs in safes and vaults has been made mandatory and that agencies of the Central and the State Governments have been permitted to designate their godowns for storage purposes. It is also clear that keeping in view the importance of protecting the seized drugs against theft, substitution or pilferage the Central Government has prescribed that such godowns shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agencies who shall exercise utmost care, circumspection and personal supervision over the storage facilities. The provision contained in

paras 3.5, 3.6, 3.7 and 3.8 also are aimed at ensuring that the godown or storage facility is satisfactory and those in-charge of the same are made accountable for its upkeep and effective management. Subsequent Notification including Notification dated 16th January, 2015 have in no way diluted the above requirement. The result is that there is a statutory framework which governs the storage of drugs and matters relating and incidental thereto. The question is whether the said statutory mechanism has been effectively implemented by the Central Government agencies and by the State Governments. Our answer regrettably is in the negative. It is evident from the responses received from the State and the Central Government agencies that no notified storage facility-godown has been established for storage of the seized drugs. Even the Narcotics Control Bureau has admitted to using mallkhana of the Courts for storage of the seized drugs in certain cases and in certain circumstances. The Customs and Central Excise Department and DRI have also stated that they have no designated storage facility for storage of contraband. The position in the States is no different. Due to non-availability of any designated godown-facility with adequate vaults and double lock system, the seized contraband is stored in police maalkhana which is a common storage facility for all kinds of goods and weapons seized in connection with all kinds of offences including those specified by the IPC. This is a totally unhappy and unacceptable situation to say the least. It is indeed unfortunate that even after a lapse of 26 years since Standing Order No. 1/89 was issued, the Central Government or its agencies and the State Governments have paid little or no attention to the need for providing adequate storage facilities of the kind stipulated in Standing Order No. 1/89 with the necessary supervisory and other controls prescribed in Section III of the said order. The result is that while Standing Order No. 1/89 very early in point of time recognized the need for providing adequate and effective storage facilities by the States and the Central Government agencies, the failure on the part of the Central Government and the State Governments to provide for such storage has defeated, if not completely negated the very purpose underlying the said notification and the provisions made therein. There is as on date hardly any credible protection against theft, replacement, pilferage and destruction of the seized drugs on account of the wholly unsatisfactory and unscientific method of storage of drugs and psychotropic substances which at times hit the headlines in newspapers on account of what is often described by the agencies as big catch worth crores of rupees in the international market. What has defied our understanding is the neglect on the part of the Central Government and its agencies and the State Governments in realizing the importance of the storage facilities and in providing for the same to prevent hazardous and at times lethal substances with great potential to do harm to those who use the same from being replaced, pilfered, stolen or siphoned out on account of very poor supervision, control or invigilation over such storage facilities. The learned amicus has in that view very rightly argued that there is a complete failure on the part of the Central Government and its agencies as also the State Governments in taking adequate steps for providing proper storage facilities with proper system of supervision and control over the drugs that are stored in the same. It was contended by Mr. Sinha, and in our opinion rightly so, that the cumulative effect of the reports submitted by the States and the Central agencies is that only 16% of the contrabands seized between 2002 to 2012 have been actually disposed of. What happened to the remaining 84% of such seizures is anybody's guess and if it is still lying in the police maalkhana, why has nobody ever bothered to apply for their disposal according to the procedure established by law is hard to fathom. The fact that the States and the Central Government agencies have accepted that no specific register is maintained by the State Police and that general maalkhana register alone is being maintained for the seized drugs shows the

neglect of all concerned towards this important aspect and the cavalier manner in which the issue regarding storage of seized drugs is approached by them. Absence of periodical inspection of the storage facility and the absence of any record suggesting that any inspection has been carried out by any of the officers shows a complete failure bordering criminal negligence by officers who are supposed to be taking action in this regard but have failed to do so.

16. The menace of drugs in this country, as observed earlier has alarming dimensions and proportions. Studies based on conferences and seminars have very often shown that the menace is deep rooted not only because drug lords have the money power and transnational links but also because the enforcement agencies like the Police and at times politicians in power help them in carrying on what is known to be a money spinning and flourishing trade. We only hope that the failure of the Central Government agencies and the State Governments in providing what is the bare minimum in terms of infrastructure required to arrest the growing menace and prevent pilferage and re-circulation of drugs back into the market is not on account of any unholy connect between the drug traffickers and the enforcement agencies. We would comfort ourselves by presuming them to be relatable only to apathy and indifference and hope that the system does not get corrupted by continued neglect lest all hopes are lost in the fight against drug menace which are eating into the vitals of our society. It is in that spirit that we deem it necessary to issue appropriate directions to the Central Government agencies and to the States to set up adequate storage facilities with effective supervisory and regulatory controls as prescribed in Notification No. 1/89.

Disposal of Drugs:

17. Section 52A as amended provides for disposal of the seized contraband in the manner stipulated by the Government under Clause 1 of that Section. Notification dated 16th January, 2015 has, in supersession of the earlier notification dated 10th May, 2007 not only stipulates that all drugs and psychotropic substances have to be disposed off but also identifies the officers who shall initiate action for disposal and the procedure to be followed for such disposal. Para 4 of the Notification inter alia, provides that officer-in-charge of the Police Station shall within 30 days from the date of receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52A(2) in terms of Annexure 2 to the said Notification.

18. Sub-para (2) of Para (4) provides that after the Magistrate allows the application under sub-section (3) of Section 52A, the officer mentioned in sub para (1) of Para (4) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in-charge of the godown. Para (5) of the notification provides for constitution of the Drugs Disposal Committee while para (6) specifies the functions which the Committee shall perform. In para (7) the notification provides for procedure to be followed with regard to disposal of the seized items, while para (8) stipulates the quantity or the value upto which the Drugs Disposal Committee can order disposal of the seized items. In terms of proviso to para (8) if the consignments are larger in quantity or of higher value than those indicated in the table, the Drugs Disposal Committee is required to send its recommendations to the head of

the department who shall then order their disposal by a high level Drugs Disposal Committee specially constituted for that purpose. Para (9) prescribes the mode of disposal of the drugs, while para (10) requires the Committee to intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para (11) deals with certificate of destruction while paras (12) and (13) deal with details of sale to be entered into the godown register and communication to be sent to Narcotic Control Bureau.

19. There are two other aspects that need to be noted at this stage. The first is that notification dated 16th January, 2015 does not in terms supersede Standing Order No. 1/89 insofar as the said Standing Order also prescribes the procedure to be followed for disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Specific overriding of the earlier Standing Order would have avoided a certain amount of confusion which is evident on account of simultaneous presence of Standing Order No. 1/89 and notification dated 16th January, 2015. For instance in para (1) of Standing Order No. 1/89 only certain narcotic drugs and psychotropic substances enumerated therein could be disposed of while notification dated 16th January, 2015 provides for disposal of all Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Again in terms of Standing Order No. 1/89 the procedure for making of application was marginally different from the one stipulated in Notification dated 16th January, 2015 not only insofar as the procedure related to the officers who could make the application is concerned but also in relation to the procedure that the DDC would follow while directing disposal. In both the notifications are prescribed the limits upto which the disposal could be directed. In case of excess quantity the disposal under the Standing Order No. 1/89 had to be done in the presence of the head of the Department whereas according to notification of 2015 in the event of excess quantity or value the disposal has to be by a high level Drug Disposal Committee to be constituted by the head of the Department. Again while Standing Order No. 1/89 specifically required the approval of the Court for disposal, notification dated 16th January, 2015 does not stipulate such approval as a specific condition. Be that as it may, to the extent the subsequent notification prescribes a different procedure, we treat the earlier notification/Standing Order No. 1/89 to have been superseded. In order to avoid any confusion arising out of the continued presence of two notifications on the same subject we make it clear that disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances shall be carried out in the following manner till such time the Government prescribes a different procedure for the same:

Cases where the trial is concluded and proceedings in appeal/revision have all concluded finally:

In cases that stood finally concluded at the trial, appeal, revision and further appeals, if any, before 29th May, 1989 the continued storage of drugs and Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is of no consequence not only because of the considerable lapse of time since the conclusion of the proceedings but also because the process of certification and disposal after verification and testing may be an idle formality. We say so because even if upon verification and further testing of the seized contraband in such already concluded cases it is found that the same is either replaced, stolen or pilferaged, it will be difficult if not impossible to fix the responsibility for such theft, replacement or pilferage at this distant point in time. That apart, the

storage facility available with the States, in whatever satisfactory or unsatisfactory conditions the same exist, are reported to be over-flowing with seized contraband goods. It would, therefore, be just and proper to direct that the Drugs Disposal Committees of the States and the Central agencies shall take stock of all such seized contrabands and take steps for their disposal without any further verification, testing or sampling whatsoever. The concerned heads of the Department shall personally supervise the process of destruction of drugs so identified for disposal. To the extent the seized Drugs and Narcotic Substances continue to choke the storage facilities and tempt the unscrupulous to indulge in pilferage and theft for sale or circulation in the market, the disposal of the stocks will reduce the hazards that go with their continued storage and availability in the market.

Drugs that are seized after May, 1989 and where the trial and appeal and revision have also been finally disposed of:

In this category of cases while the seizure may have taken place after the introduction of Section 52A in the Statute book the non-disposal of the drugs over a long period of time would also make it difficult to identify individuals who are responsible for pilferage, theft, replacement or such other mischief in connection with such seized contraband. The requirement of para 5.5 of standing order No. 1/89 for such drugs to be disposed of after getting the same tested will also be an exercise in futility and impractical at this distant point in time. Since the trials stand concluded and so also the proceedings in appeal, Revision etc. insistence upon sending the sample from such drugs for testing before the same are disposed of will be a fruitless exercise which can be dispensed with having regard to the totality of the circumstances and the conditions prevalent in the maalkhanas and the so called godowns and storage facilities. The DDCs shall accordingly take stock of all such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances in relation to which the trial of the accused persons has finally concluded and the proceedings have attained finality at all levels in the judicial hierarchy. The DDCs shall then take steps to have such stock also destroyed under the direct supervision of the head of the Department concerned.

(3) cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme Court:

In such cases the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16th January, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time.

20. To sum up we direct as under:

No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading seizure and sampling. The sampling shall be done

under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading disposal of drugs.

21. Keeping in view the importance of the subject we request the Chief Justices of the High Courts concerned to appoint a Committee of Judges on the administrative side to supervise and monitor progress made by the respective States in regard to the compliance with the above directions and wherever necessary, to issue appropriate directions for a speedy action on the administrative and even on the judicial side in public interest wherever considered necessary.

22. List the appeal for final hearing now on an early date.

...J.

(T.S. THAKUR) ...J.

(KURIAN JOSEPH) New Delhi January 28, 2016