

No. U5/46416/2020/PHQ

Police Headquarters

Thiruvananthapuram

Mail:Phq.pol@kerala.gov.in

Phone:0471-2721547

Dated 14/05/2020

Erratum

Sub: Disposal of Narcotic Drugs, Psychotropic Substances, controlled substances and conveyances (vehicles etc.) involved in NDPS Cases u/s. 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) through State level and District Level Drugs Disposal Committees – Change of circular number –Erratum issued -reg

Ref: - PHQ Circular No.05/2020 issued in file of even No. dated 7/5/2020.

Circular Number regarding the Disposal of Narcotic Drugs, Psychotropic Substances, controlled substances and conveyances (vehicles etc.) involved in NDPS Cases u/s. 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) by State level and District Level Drugs Disposal Committees, issued from PHQ vide reference cited may be corrected and read as **Circular No. 17/2020 dated 7/5/2020 (Copy enclosed)**. The rest of the orders contained in the reference cited is unchanged.


14.05.2020.

V Ajith

(I/C) Superintendent of Police (HQ)
For State Police Chief
Police Headquarters

To : All District Police Chief's & SHOs of all Police Stations, for compliance.

- Copy To :
1. All Officers in List 'B' [including Spl. Units], for info & n/a.
 2. The Chief Commissioner of Central Excise, Kochi, Central Excise & Customs Commissionerate, Press Road, Kochi – 682 018.
 3. The Zonal Director NCB, Zonal Directorate Chennai, Rajaji Bhavan, Basant Nagar, Chennai – 600 090.
 4. The Director, Directorate of Revenue Intelligence, Cochin Zonal Unit, Vilakunnel House, Kaithoth Road, Palarivattom, Kochi – 682025.
 5. The Excise Commissioner, Excise Commissionerate, Vikas Bhavan P.O., Nandavanam, Thiruvananthapuram - 695 033.
 6. Shri. Suman Chakravarthy, Sr. Govt. Pleader & Public Prosecutor, High Court of Kerala.
 7. All Officers in PHQ /Legal Advisor, PHQ / Dy. Director, State Police Media Centre, PHQ

No. U5/46416/2020/PHQ

Police Headquarters

Thiruvananthapuram

Mail: Phq.pol@kerala.gov.in

Phone: 0471-2721547

Dated /05/2020

Erratum

Sub: Disposal of Narcotic Drugs, Psychotropic Substances, controlled substances and conveyances (vehicles etc.) involved in NDPS Cases u/s. 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) through State level and District Level Drugs Disposal Committees – Change of circular number –Erratum issued -reg

Ref: - PHQ Circular No.05/2020 issued in file of even No. dated 7/5/2020.

Circular Number regarding ^{the} Disposal of Narcotic Drugs, Psychotropic Substances, controlled substances and conveyances (vehicles etc.) involved in NDPS Cases u/s. 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) ^{by} through State level and District Level Drugs Disposal Committees, issued from PHQ vide reference cited may be corrected and read as **Circular No. 17/2020 dated 7/5/2020 (Copy enclosed)**. The rest of the orders contained in the reference cited is unchanged.

V Ajith

(I/C) Superintendent of Police (HQ),
For State Police Chief,
Police Headquarters

To : All District Police Chief's & SHOs of all Police Stations, for compliance.

Copy To :

1. All Officers in List 'B' [including Spl. Units], for info & n/a.
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No.U5-46416/2020/PHQ

Police Headquarters,
Thiruvananthapuram
phq.pol@kerala.gov.in
04712721547
Dated. 07-05-2020

Circular No. 17/2020/PHQ

Sub : Disposal of Narcotic Drugs, Psychotropic Substances, controlled substances and conveyance (vehicles etc.) involved in NDPS Cases u/s. 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) through State level and District Level Drugs Disposal Committees - Instructions - Reg.

- Ref :1) Ministry of Finance, Department of Revenue, Notification No.G.S.R.38 (E) dated 16-01-2015 published in the Gazette of India : Extraordinary, Part II- Sec 3 (i) [Copy attached].
2) Judgment of the Hon'ble Supreme Court of India dtd 28/01/2016 in Union of India Vs. Mohanlal [Crl. Appeal No.652/2012].
3) PHQ Circular No.32/2018 dated 15/11/2018.
4)Letter No.Crl.MC 1350/2020/DGP/SPP from Shri. Suman Chakravarthy, Sr.GP, High Court of Kerala, dated 18/03/2020.
5) PHQ Proceedings No. U5-46416/2020/PHQ dated 05/05/2020.

A large number of cases are pending before Hon'ble High Court with regard to release of vehicles involved in NDPS cases. It has also been brought to the notice of the undersigned, vide reference 4th cited, that investigation in NDPS cases is carried out in a improper and lethargic manner, especially with regard to the compliance of the procedure for disposal of conveyances involved in NDPS Cases u/s. 52A of the NDPS Act, which reads as below:

52 A. Disposal of seized narcotic drugs and psychotropic substances-

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic

substances, class of controlled substances or conveyances, 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 drugs, psychotropic substances, controlled substances or conveyances 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, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances 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, psychotropic substances, controlled substances or conveyances 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, substances or conveyances 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) Where 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.

02. The NDPS Amendment Act, 2014, brought significant change to Sec. 52A of the NDPS Act by including conveyances also among the items to be disposed. In exercise of the powers conferred under section 52A (1) of the NDPS Act, the Central Government, vide reference 1st cited, had notified the procedure to be followed in the matter of disposal of narcotic drugs, psychotropic substances, controlled substances and conveyances (vehicles etc.). The said notification empowers the Head of the Department of the State Drug Law Enforcement Agency to constitute Drug Disposal Committees. Accordingly, the State and District Level Drug Disposal Committees have been constituted for the Police Department, vide reference 5th Cited.

03. Ministry of Finance notification (ref. cited 1st) and the Judgment of the Apex Court (ref. cited 2nd) lays down the procedure for the disposal of the seized narcotic drugs, psychotropic substances and conveyances and these are to be scrupulously followed in the disposal of conveyances etc. in NDPS cases. On the basis of the Apex Court verdict vide reference 2nd cited, the following guidelines are issued for expeditious disposal of drugs and conveyances, namely:-



1) The District Level Drug Disposal Committees (DDCs) shall meet as frequently as possible and dispose of the drugs forwarded to it by destruction, as contemplated in Notification 1st cited, and obtain certificate of destruction from the Magistrate concerned. The conveyances forwarded to it shall be disposed of by way of public auction immediately. The progress of disposal shall be reported by the committees with specific remarks to the undersigned on a monthly basis. The DDCs shall strictly follow the procedure in MoF Notification 1st cited.

2) Upon seizure of any narcotic drug, psychotropic substances, controlled substance or conveyance, the seizing officer shall forward the same immediately to the officer-in-charge of the nearest Police Station or to the officer empowered u/s. 53 of the NDPS Act (Officers of and above the rank of Inspector in the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, Central Economic Intelligence Bureau in Central Government and Officers of the Excise Department not below the rank of an Excise Inspector are also empowered u/s. 53 of the NDPS Act, in addition to the officer-in-charge of the nearest Police Station). **Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station, he shall comply with the procedure u/s. 52 A of the NDPS Act scrupulously.**

3) The Officer shall **prepare an inventory** and **take photographs** of the narcotic drugs and psychotropic substances, controlled substance and conveyance, as per Annexure I of the notification 1st cited, and apply to the magistrate under sub-section (2) of Sec. 52A of the NDPS Act, as per Annexure II.

4) The designated Officer ie. SHO shall, without any delay, obtain the certification of inventory and photographs prepared as per Annexure I, from the Magistrate concerned.

5) After drawing the samples of drugs to be sent to the chemical Examiner's laboratory/FSL in the presence of the Magistrate, the remaining drugs, if any, and conveyance shall be forthwith forwarded to the Drug Disposal Committee.

6) Upon receipt of the drugs and conveyance from the designated officer as above, the Drug Disposal Committee shall issue godown receipt for the drugs and conveyance received by it.

7) **Under no circumstance the Drug Disposal Committee shall return the drugs or conveyance produced before it back to the designated officer or SHO for safekeeping.**

8) The Drug Disposal Committee shall take every endeavor to clear the backlog and dispose of the conveyances in public auction in a time bound manner. A separate report shall be forwarded to the undersigned by the Drug Disposal Committees regarding clearance of backlog as on 01-05-2020.

9) The judgment of the Supreme Court as well as the MoF notification 1st cited provides for disposal of the conveyances within the shortest period of time by the Drug Disposal Committees (DDC). No other powers are vested with the DDC apart from disposal, hence the DDC cannot entertain any application/representations/appeals by the registered owner of the conveyances for release/interim release of conveyances.

10) The Hon. High Court of Kerala in Shajahan Vs Inspector of Excise and others, [Crl.Rev.Pet No.1440/2018] has held that the **Magistrate courts have no jurisdiction to release the vehicle involved in any NDPS case** on interim custody u/s. 451 of the Code of Criminal Procedure, 1973. Hence disposal of conveyances should be given top priority by the drug disposal committees.

11) **The practice of producing conveyances before the courts as Thondy articles should not be resorted to as this is not lawful.** The procedure contemplated u/s. 52A of the NDPS act has to be strictly followed by the designated officers/SHOs.

12) The District Level Drug Disposal Committee can order disposal of seized items upto the quantity or value indicated in the table provided in clause 8 of the MoF notification 1st cited. If the consignments are larger in quantity or of higher value than those indicated in the table, the District Level DDCs shall send its recommendations to the undersigned and such cases would be dealt separately by the State Level Drug Disposal Committee.

04. All Officers are hereby directed to comply with the above guidelines, forthwith.

Loknath Behera IPS
State Police Chief

To : All District Police Chief's & SHOs of all Police Stations, for compliance.

Copy : 1. All Officers in List 'B' [including Spl. Units], for info & n/a.
To : 2. The Chief Commissioner of Central Excise, Kochi, Central Excise & Customs Commissionerate, Press Road, Kochi – 682 018.
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6. Shri. Suman Chakravarthy, Sr. Govt. Pleader & Public Prosecutor, High Court of Kerala.
7. All Officers in PHQ / Legal Advisor, PHQ / Dy. Dir, State Police Media Centre, PHQ.
8. Circular Book / Stock File / Webadmin SCRB

NB: District level Drug Disposal Committees are directed to report the action taken to the undersigned before 30th June 2020.



U5-46416/2020/PHQ



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No.15/2020/CAMP/SPC

Police Headquarters, Kerala

Thiruvananthapuram-695010

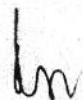
Dated: 07/05/2020

Note

It has come to the notice that this year some circulars are issued in same number. This has occurred due to issuance of circulars and EDs through iAPS generation as I understand. To avoid this duplication, the circulars and executive directives shall be numbered and issued by manual numbering hence forth.

For the time being, SP HQ shall issue erratum effecting the re-numbering of the circulars and EDs having same numbers with new ones. If required they can be reissued afresh. He shall ensure all the Circulars/EDs other than confidential, till date, be uploaded in official website in next 2 days without fail.

ADGP HQ will ensure this.



DGP/SPC Kerala

To

All Staff Officers

Manager PHQ- to inform all SS/JS/all seats

Copy to: CA to SPC

Copy to all SS, /JS, for strict compliance today itself without fail.