

(2010) 05 P&H CK 0128

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Arvinder Singh alias Harvinder
Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 6, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 22, 61
- Pharmacy Act, 1948 - Section 32

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Nirmaljit Kaur, J.

This is a petition u/s 482 of the Code of Criminal Procedure for quashing of FIR No. 253 dated 04.09.2008 under Sections 22/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Jalandhar.

2. It is stated by the learned Counsel for the petitioner that the petitioner is a registered Pharmacist u/s 32(2) of the Pharmacy Act, 1948 vide certificate No. 20079 dated 25.03.1998 valid up to 31.12.2012. It is further stated that the petitioner has a licence to sell, stock or exhibit (or offer) for sale or distribute by retail biological/ non-biological drugs for keeping in his possession the drugs alleged in the FIR and is carrying on the work of a retail chemist. Copy of the license has been placed on record as Annexure P-3. It is also submitted that the seized article named in the FIR is chemically named "dextropropoxyphene". It is further contended that the drugs, namely, dextropropoxyphene falls under the Drugs and Cosmetic Act as mentioned at serial No. 94 in Schedule "H" and is being used for medicine purposes.

3. Learned Counsel for the petitioner brought to the notice of the Court the order dated 22.03.2006 passed in Criminal Appeal No. 1834 of 2003, whereby, on directions of this Court, the State Government had constituted a Committee to go into all such matters and see in case any offence under the NDPS Act is made out in those cases where the recovery of drugs is involved and specially when these persons are having license to run Chemist Shop.

4. Accordingly, the meeting regarding review of the said case was held and the SIT has submitted its report vide forwarding letter dated 05.05.2010 of the Additional Director General of Police, Crime, Punjab Chandigarh. The said report was handed over by the learned Counsel for the State and the same is taken on record. As per the same, the Chemical Analysis Report revealed as under :

Report reveals that the recovered drugs contained the sale of Dicyclomine hydrochloride propoxyphene napsylate ace taminephen destropoxy phene.

5. As per the aforesaid report, the Technical opinion of Drugs Inspector is as under :

The Drugs recovered is covered at Sr. No. 87 of the notification No. 826 E dated 14.11.1985 as it contain salt destropoxyphene and hence not covered under the N.D.P.S. Act, 1985 being scheduled drug formulation. Further paracetamol/acetaminophen is analgesic and antipyretic drug where as the drug dicyclomine is an antispasmodic drug and both are the scheduled drugs formulations hence don't fall within the purview of NDPS Act, 1985.

6. Thereafter, the Committee recommended as under :

On the perusal of the Chemical Analysis and Drug Inspector's Report, it has revealed that drug recovered at Sr. No. 87 of the Notification No. 826 E dated 14.11.1985 as it contained salt of destropoxyphene and have not covered under the NDPS Act 1985 being scheduled drug formulation. It is concluded that the Provisions of NDPS Act, 1985 in this case are not attracted as the petitioner claims to be a holder of a valid drug licence but he has violated the Provision of the Drug and Cosmetics Act, 1940.

7. Thus, as per the aforesaid report, no offence under Narcotics Drugs and Psychotropic Substances Act, 1985, is made out against the present petitioner. However, the provisions of Drugs & Cosmetics Act 1940, have been violated.

8. This Court, in the case of Johnson and another v. State of Punjab in CrI. Misc. No. 25319-M of 2004 vide Order dated 11.10.2006, in similar circumstances, held as under

After reviewing the present case, the aforementioned committee concluded that no offence under NDPS Act was made out and the allegations disclosed commission of offence under the Drugs and Cosmetic Act only. The conclusion of the Committee in respect of the present case is reproduced here-in-below :

Do not attract the provision of NDPS Act 1985 because psychotropic substance salts are not found in recovered medicines. Accused deserved to be charge under Drug & Cosmetic Act, 1940. Recommended for cancellation." As a result of above, I hold that no offence under the provisions of NDPS Act is made out against the petitioners. The prosecution allegation disclose commission of an offence under the Drugs and Cosmetic Act. However, the petitioners cannot be prosecuted for the offence under the Drugs and Cosmetics Act on the basis of FIR as only a complaint by the Drugs Inspector was competent for initiating action against the petitioners in accordance with the provisions of that Act.

9. In another case of Pawan Kumar and another v. State of Punjab CRR No. 165 of 2009, decided on 28.01.2010), this Court allowed the revision petition by holding as under :

In view of the recommendations of the Committee and above discussion, the petitioner can be prosecuted only under the Drugs and Cosmetic Act.

Accordingly, the present revision petition is allowed and the impugned order dated 15.11.2008 (Annexure P-1) passed by the Special Judge, SAS Nagar, Mohali whereby the petitioners have been charged for offences under Sections 22/61/85 of NDPS Act in consequence of FIR No. 243 dated 12.08.2008 registered at Police Station Kharar, District SAS Nagar, is quashed.

However, the State is at liberty to proceed against the petitioners under the relevant provisions of the Drugs and Cosmetic Act.

10. Thus, in view of the recommendations of the Committee and above discussion, no offence under the provisions of Narcotics Drugs and Psychotropic Substances Act, 1985, is made out against the present petitioner. The prosecution allegation discloses commission of an offence under the Drugs and Cosmetics Act.

11. Accordingly, the present petition is accepted and the proceedings launched against the present petitioner under the provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 by way of registration of FIR are quashed. However, the concerned Drug Inspector is at liberty to proceed against the petitioner under the relevant provisions of the Drugs and Cosmetic Act by filing a criminal complaint, if so advised.