
(2008) 04 P&H CK 0148

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 78 of 1994

Hem Raj

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 25, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Drugs and Cosmetics Act, 1940 - Section 18(a), 18(c), 27(b)(ii), 28

Citation: (2008) 3 RCR(Criminal) 475

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: P.S. Tiwana, for the Appellant; Mehardeep Singh, Assistant Advocate General Punjab For the State, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Petitioner Hem Raj was convicted by the Court of Chief Judicial Magistrate, Patiala in complaint No. 39 dated 26th August, 1986 u/s 27(b)(ii) read with section 18(c) and u/s 28 read with Section 18(a) of the Drugs and Cosmetics Act for possession of various allopathic drugs to undergo rigorous imprisonment for one year and fine of Rs. 5,000/-, in default of payment of fine he was ordered to undergo rigorous imprisonment for three months. Learned Chief Judicial Magistrate, Patiala while convicting the petitioner, held that the petitioner has been unable to disclose the source of acquisition of allopathic drugs mentioned in seizure memo (Ex.P-A) and therefore, he has committed an offence under the sections mentioned above.

2. Aggrieved against this, petitioner had filed an appeal in the Court of Sessions Judge, Patiala and same was dismissed on 15th January, 1994 by the Court of Additional Sessions Judge, Patiala. Both the courts below have returned the findings of fact that from the shop of the petitioner situated in village Gurditpura tehsil Nabha, on 7th March, 1985, M.L. Gupta, Drug Inspector had found the following

allopathic drugs:

1. 10 capsules tetracycline BN 5275.
2. 10 Tabs. Melubrim BN MBT 11984.
3. 2 x 30 Tabs Lariago BN 6075.
4. 2 x 10 Tabs Dilosyn BN 446.
5. 63 Tabs Mecrabarim BN Glaxo.
6. 2 x 10 Tabs Cortomine Forte BN CR.001.
7. 13 x 6 Tabs Mebenda Zole BN 104.
8. 1 x 10 m., Inj. AVIL BNo. 459.
9. 1 x 10 ml. Inj. Kesequill BN M-204.
10. 6 x 1 ml. In. Kapclin BN 312.
11. Approx. 50 Tabs Unizyme BN G-41998.

3. The petitioner was also found in possession of one BP Apparatus, one stethoscope, one 5cc and pme 2cc syringes with five Needles along with a copy of one patient register.

4. After recovery of the above said allopathic drugs, Drug Inspector, Patiala instituted complaint in the Court of Chief Judicial Magistrate, Patiala on 26.08.1986. In the charge, it was specifically stated that petitioner failed to produce any valid drug sale license or certificate of registered medical practitioner. In the Court, M.L. Gupta appeared as PW-1; Dr. P.C. Goel, who was then posted in Primary Health Centre, Bhadson appeared as PW-2.

Petitioner was examined u/s 313 Cr.P.C. and he stated that he has been falsely implicated.

5. Petitioner examined DW-1, Pawan Kumar to state that on the day of occurrence, Pawan Kumar had gone to the Clinic of Chaman Lal and the accused had also gone there to buy some medicine and when they were sitting there, raid was conducted and the real culprit Chaman Lal had been allowed to escape. whereas, the present petitioner is engaged in the business of grills manufacturing.

6. Both the courts below have placed implicit reliance upon the testimony of two witnesses and has discredited the defence evidence. Therefore, in the revisional Court, I am hesitant to disturb unanimous finding of fact returned by two courts below. Mr. P.S. Tiwana appearing for the petitioner at the outset, has stated that occurrence pertains to year 1985 and petitioner has suffered a protracted trial of more than 23 years.

7. Section 27(b)(ii) of the Drugs and Cosmetics Act prescribes minimum sentence to be imprisonment for a term, which shall not be less than one year and fine shall also not be less than Rs. 5,000/-. However, it has been provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year and a fine of less than Rs. 5,000/-. Mr. Tiwana has relied upon a single bench judgment of this Court in *Rachpal Singh v. State of Haryana*, 2003 (2) RCR (Cri) 441 (P&H), to contend that in that case sentence was modified and was reduced to already undergone. He has further stated that in *State of Orissa v. Janmejy Dinda*, 1998 (1) RCR(Criminal) 864 (SC), in an appeal against the acquittal filed by the State, Court came to conclusion that accused therein is guilty of the offence but had only imposed a fine of Rs. 1,000/-.

8. A perusal of the drugs 1 to 11 will show that these drugs are commonly available. In nowhere, finding has been given that drugs were spurious or adulterated. Failure on the part of the petitioner to disclose the source from where these drugs were acquired, especially when there was no misbranding of the drugs and even the time had not expired of the medicine, along with the fact that petitioner has suffered more than 23 years of protracted trial, it is sufficient to reduce the sentence of the petitioner to already undergone while maintaining the sentence of fine. The appeal of the petitioner was dismissed on 15th January, 1994. He was granted bail by this Court on February 8, 1994. Mr. Tiwana has contended that two days thereafter, petitioner was released from the jail and he has undergone about 25 days.

9. Therefore, in my opinion, ends of justice will be met in case sentence of the petitioner is reduced to already undergone, however, the sentence of fine is maintained.

With these observations present revision petition is disposed off.