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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : **27.07.2026**

M/S BAJWA MEDICAL STORE

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. The Zonal Licensing Authority (Drugs) (respondent no.2), vide an order dated 12.05.2025 (Annexure P-8), cancelled the retail drug licence of the petitioner, and against the said order the statutory appeal preferred under Rule 66 (2) of the Drugs and Cosmetics Rules, 1945 (for short the 'Rules of 1945') was also dismissed by Appellate Authority concerned, vide order dated 21.04.2026 (Annexure P-11). Aggrieved by the aforesaid orders, the proprietor of the petitioner-firm has instituted the present writ petition under Articles 226/227 of the Constitution of India, challenging their legality and validity of the orders (*supra*).
2. In order to establish his case, learned counsel for the petitioner has raised two-fold arguments:-



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i. Referring to the proviso to Rule 66(1) of the Rules of 1945, it is contended that there is a specific bar against cancellation or suspension of a licence where the licensee or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act in question took place.

ii. For the same offence an FIR bearing No.37, dated 23.04.2025, under Section 223 of Bharatiya Nyaya Sanhita (BNS), 2023, was registered at P.S. Dorangla, Gurdaspur, was registered against the petitioner, wherein, after facing trial, he has now earned acquittal vide verdict dated 05.06.2026 (Annexure P-13).

Elaborating the aforesaid submission, it is contended that the Trial Court found material contradictions, with regard to number of capsules containing drug '*Pregabalin*' alleged to have been recovered from the petitioner. Since the recovery of said capsules was not proved by the prosecution, the Trial Court proceeded to acquit the petitioner. This finding of Trial Court ought to have been considered by the Zonal Licensing Authority as well as the Appellate Authority concerned, in its right earnest, but, they failed to do so.



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3. This Court has considered the submissions made by learned counsel for the petitioner, and finds that the same carry no merit, for the reasons recorded hereinafter.

4. In the instant case on 23.04.2025, the retail shop/sale premises of the petitioner was inspected by the Drug Controller Officer alongwith police officials under the provisions of the Drugs & Cosmetics Act, 1940 & Rules, 1945. During the inspection, the petitioner was found to have committed the following contraventions: :-

“1. On demand you failed to produce the purchase record of four types of drug, hence seized on Form 16 by Drugs Control Officer. (The drug at Serial No 1 contains *Pregabalin* as per label Claim). Thus, you have contravened Rule 65 (4) (4) and 65 (6) of the Drugs Rules, 1945.

2. A. Sale record neither kept nor shown on demand.

B. In spite of Stocking of Schedule H1 drugs, no separate register was maintained for such Schedule H1 Drugs.”

5. Consequently, the petitioner was served with a show cause notice, dated 28.04.2025. He was afforded adequate opportunities to produce the sale and purchase records pertaining to the Schedule H1 drug, namely *Pregabalin*. However, despite such opportunities, the petitioner failed to submit any reply or produce the requisite documents. Consequently, vide the impugned order dated 12.05.2025 (Annexure P-8), the retail drug licence of the petitioner was cancelled with immediate effect.

6. Before the Appellate Authority concerned, the petitioner has not disputed the fact of recovery of capsules containing drug '*Pregabalin*' from his sale premises, however, he asserted that one of his acquaintance



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working as a medicine salesman, namely, Rohit, had left 2-3 boxes in his shop temporarily, but he was totally unaware of the contents of the said boxes. The petitioner also took a stand before the Appellate Authority, that he has been falsely implicated on account of rivalry with a local drug addict, namely Lakhanpal, who had previously threatened to get his shop closed. The Appellate Authority, finding that the aforesaid defence was unsupported by any evidence, dismissed the appeal.

7. The first submission advanced on behalf of the petitioner is that neither the petitioner nor his agent or employee had been guilty of any similar act or omission within twelve months preceding the act in question. Therefore, by virtue of the *proviso* to Rule 66(1) of the Rules of 1945, the Zonal Licensing Authority (Drugs) could neither cancel nor suspend the petitioner's drug licence.

8. At this juncture, since heavy reliance is being placed upon the *proviso* attached to sub rule (1) of 66 of the Rules of 1945, it assumes significance, therefore, the same is extracted hereinafter:-

“(1)The licensing authority may, after giving the licensee an opportunity to show cause why such an order should not be passed by an order in writing stating the reasons therefor, cancel a license issued under this Part or suspend it for such period as he thinks fit, either wholly or in respect of some of the substances to which it relates, if in his opinion, the licensee has failed to comply with any of the conditions of the license or with any provisions of the Act or rules thereunder:

[Provided that, where such failure or contravention is the consequence of an act or omission on the part of an agent or employee, the license shall not be canceled or suspended if the licensee proves to the satisfaction of the licensing authority-

(a) that the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or a director of the company, or



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(b) that he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission, the licensee had not or could not reasonably have had knowledge of that previous act or omission, or
(c) if the act or omission was a continuing act or omission, he had not or could not reasonably have had knowledge of that previous act or omission, or
(d) that he had used due diligence to ensure that the conditions of the license or the provisions of the Act or the rules thereunder were observed.] ”

9. A perusal of the above extracted provision, makes it ample clear that the same protects the licensee from extreme punishment, like cancellation of drug licence, on account of contravention(s), which is the consequence of an act or omission on the part of licensee's agent or his employee. If the licensee is able to satisfy the Licensing Authority that the contravention was the consequence of such act or omission on the part of his agent or employee, and further establishes compliance with the conditions stipulated in clauses (a) to (d) of the *proviso*, only then he can claim immunity from the extreme penalty of cancellation or suspension of the licence.

10. The aforesaid embargo against cancellation of a drug licence comes into operation only where the act or omission is attributable to the agent or employee of the licensee. It has no application where the violation or contravention is committed by the licensee himself. Likewise, the protection against cancellation or suspension of a drug licence on the ground that neither the licensee nor his agent or employee had been guilty of any similar act or omission within twelve months preceding the act or omission in question would be available only where



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the violation or contravention is the consequence of an act or omission on the part of the licensee's agent or employee.

11. The aforesaid issue was examined by the High Court of Kerala, in “**Kolambil Hamza Haji vs. State of Kerala and others**” AIR Online 2020 Ker 1262, wherein similar observation has been made, and it was held that the bar contained in *provisio* attached to Rule 66(1) of the Rules 1945, against suspension and cancellation of drug licence would come into play only, when the contravention is the direct consequence of act or omission on the part of agent or employee of the licensee. The relevant is extracted hereinafter:-

“9.....A careful scrutiny of the Rule would show that the bar against cancellation or suspension of licence would come into play only when the contravention is the consequence of an act or omission on the part of an 'agent' or 'employee'. In such cases, the licensee could prove that 'he or his agent or employee' had not been guilty of any similar act or omission within 12 months of the date on which the instant act or omission was detected. The bar against cancellation of licence would-have no application when the violation/contravention is committed by the licensee himself. The proviso is intended to safeguard the interest of a licensee, who is unaware of the contraventions committed by his agents or employees and not when the licensee himself is the violator. Further, even if the contravention is due to the act of an agent or employee, the bar would not apply if such violation was within 12 months of the present inspection and detection. This would imply that the bar against cancellation would come to the benefit of a licensee, who does not contravene the conditions and is also alert enough to prevent any such action by his employee or agent. As rightly contended by the learned Government Pleader, the provisions of the Drugs and Cosmetics Act should be given a purposive interpretation. The scope of the proviso to Rule 66 cannot therefore be widened and the safeguard extended to a licensee who is personally responsible for the contravention.”



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12. The scope of proviso to Rule 66(1) was also examined in “**Sheeba Antony vs. State of Kerala**” WP (C) 19522 of 2013, and held as under:-

“8..XXX XXX XXXX XXXX XXXX

a. that the act or omission was not instigated or connived at by him or, if the licensee is a firm or company, by a partner of the firm or a director of the company b. that he or his agent or employee had not been guilty of any similar act or omission within twelve months before the date on which the act or omission in question took place, or where his agent or employee had been guilty of any such act or omission, the licensee had not or could not reasonably have had, knowledge of that previous act or omission, or c. if the act or omission was a continuing act or omission, he had not or could not reasonably have had knowledge of that previous act or omission, or d. that he had used the due diligence to ensure that the conditions of the licence or the provisions of the Act or the rules thereunder were observed] It is true that the licensee is vested with a right to plead ignorance and to avoid the consequences as mentioned under Rule 66 (1), if the act/omission on the part of the agent/employee was not known to him. The 'proviso' absolves the licensee, where such failure/contravention is on the part of the agent/employee. This has to be read and understood not in an isolated manner but with reference to the Scheme of the Statute. The words 'act or omission' on the part of agent or employee and the consequences of such act/omission leading to the failure or contravention of the provisions are having significance. The Law of Agency visualizes the 'Principal' to be liable for the act of the 'Agent'. This can only be read and understood, to mean that an 'act or omission' on the part of the agent or employee, is something other than the normal course and procedure in connection with the day-to-day transactions, of which the licensee reasonably is not in a position to foresee. The scope of such act/omission is more discernible from 'sub clauses (c) and (d)' of the proviso to Rule 66 (1) as to the due diligence to be taken on the part of the Agent to ensure the satisfaction of the conditions of the licence/provisions of the Act/Rules. In any view of the matter, the sale of 'Schedule H' drugs without the supervision of a registered Pharmacist can never be categorized as an act or omission on the part of the agent/employee, so as to absolve the licensee's involvement in this regard. Same is the position with regard to the stocking/preserving of the 'date expired drugs' (expired about



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a year back), along with other drugs intended for sale in the same refrigerator.”

13. This Court is also in concurrence with the view taken by the High Court of Kerala in the afore-discussed judgements.

14. In the present case, the contravention is attributable to the petitioner himself, and not to any act or omission on the part of his agent or employee. Consequently, the petitioner cannot claim the benefit of the proviso to Rule 66(1) of the Rules of 1945. Hence, first contention of the petitioner is answered against the petitioner.

15. Let us examine the second, contention, as raised by learned counsel for the petitioner, regarding acquittal of the petitioner by the Trial Court concerned in case/FIR No.37, dated 23.04.2025.

16. The petitioner was prosecuted for violating the restrictions imposed by the District Magistrate vide order dated 05.04.2023, whereby storage of medicines containing *Pregabalin* was prohibited. Accordingly, he was tried for the offence punishable under Section 223 of the Bharatiya Nyaya Sanhita (BNS), 2023. The Trial Court, on appreciation of the evidence, found material contradictions in the testimony of the prosecution witnesses and further held that the FIR under Section 223 of the BNS, 2023, was not maintainable, as cognizance of the offence could not have been taken in the absence of a written complaint by the public servant concerned. Hence, on these two main grounds the petitioner was acquitted.



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17. In the considered opinion of this Court, the acquittal of the petitioner does not *ipso facto* entitles the petitioner to challenge the order dated 12.05.2025 (Annexure P-8) passed by the Zonal Licensing Authority under the provisions of Rule 66 of the Rules of 1945. There is an omission on the part of the petitioner as he failed to produce purchase record of four types of drugs, specifically the drug containing '*Pregabalin*', which is Schedule H1 drug. Hence, the second contention is also answered against the petitioner.

18. As per the rules, every licensee is required to maintain a separate register for Schedule H1 drugs. Admittedly, the petitioner failed to comply with this mandatory requirement. Despite being afforded adequate opportunities to produce the purchase records, he failed to do so. Instead, before the Appellate Authority, he introduced an altogether new defence by alleging that the drugs had been temporarily left at his premises by his acquaintance, Rohit, a medical salesman.

19. The said explanation was rightly rejected by the Appellate Authority as being unsupported by any evidence. This Court also finds itself unable to accept the said defence, which appears to be a mere afterthought intended to evade liability arising out of the contravention of maintaining Schedule H1 drugs without any purchase record. The circumstances strongly suggest that the drugs had been procured through unauthorised channels for illegal sale to drug addicts in the areas of Punjab.



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20. It is a matter of common knowledge that the State of Punjab continues to struggle with the grave menace of drug abuse, which poses a serious threat to public health and social order. The statutory provisions governing Schedule H1 drugs have been enacted to ensure strict accountability in their stocking, sale and distribution, so as to prevent their reach into the illicit market. Any contravention of these mandatory provisions may aggravate the existing drug menace. Therefore, no leniency can be granted to drug licence holders, who fail to comply with the statutory provisions governing Schedule H1 drugs.

21. Accordingly, the instant petition, is hereby **dismissed**.

22. All pending application(s), if any, also stand **disposed** of accordingly.

July 27, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes
Whether Reportable. : Yes