

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

**CRR No. 1556-2011 (O&M)
Date of Decision: 9.10.2015**

Varun Kumar Arora @ Sunny Arora

.....petitioner

Vs.

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. K.D.Sachdeva, Additional A.G. Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition, at the hands of the accused, is directed against the impugned order dated 7.6.2011 passed by the learned Additional Sessions Judge, Amritsar, whereby charges were framed against the petitioner under Sections 274/275/276/420/467/471 of the Indian Penal Code ('IPC' for short), Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1885, ('NDPS Act' for short) and Section 27 (B) (ii) of the Drugs and Cosmetic Act, 1940 ('Act of 1940' for short).

Notice of motion was issued, vide order dated 21.7.2011 and further proceedings before the learned trial court, qua the

petitioner, were stayed. A short affidavit dated 16.5.2013 of the Assistant Commissioner of Police (Central) Amritsar City was filed on behalf of the respondent State. Thereafter, another affidavit dated 13.9.2014 of the District Drugs Inspector, Amritsar, was filed. An affidavit dated 13.9.2014 was also filed by the Assistant Commissioner of Police (South) Amritsar, City.

Placing reliance on the provisions of Section 22 read with Section 8 (c) of the NDPS Act, Rules 53, 55 and 64 of the NDPS Rules, 1985 and entry 43 of the Schedule, learned counsel for the petitioner submits that since all the three drugs recovered from the petitioner were not part of Schedule-I, provisions of Section 8 (c) of the NDPS Act would not be attracted against the petitioner. Similarly, NDPS Rules, 1985, would also not apply, because Diazepam was not one of the drugs mentioned in Schedule-I. He further submits that since it was Schedule H drug, as envisaged in entry 147 of Schedule H of the Act of 1940, the FIR could not have been registered against the petitioner under the provisions of NDPS Act and accordingly, the impugned order, framing charges against the petitioner, was an order without jurisdiction, it being beyond the scope of NDPS Act and the statutory rules framed thereunder. In support of his contentions, learned counsel for the petitioner places reliance on the following judgments:-

1. State of Uttaranchal Vs. Rajesh Kumar Gupta, 2007 (1) SCC 355 (SC).

2. Rajinder Gupta and etc Vs. State, 2006 CriLJ 674 (Delhi High Court).

3. Directorate of Revenue Intelligence Vs. Raj Kumar

Arora and another, 2011 (4) CCR 53 (Delhi High Court)

4.Narcotics Control Bureau Vs. Sajesh Sharma, (CrI.M.C. 2335/2010 decided on 6.3.2013 (Delhi High Court).

5. Ajaib Singh Vs. State of Punjab, 2012 (2) RCR (criminal) 330 (Pb & Hry High Court).

6. Kashmir Singh Vs. State of Punjab 2012 (1) RCR (criminal) 684 (Pb & Hry High Court).

He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that petitioner has no case because the impugned order, framing charge against the petitioner, was a factually correct and legally justified order. Relying upon a Division Bench judgment of this Court in **Inderjeet Singh @ Laddi and others, Vs. State of Punjab, 2014 (3) RCR (criminal) 953** and also a Single Bench judgment of this Court in **Vinod Kumar Vs. State of Punjab, 2013 (1) RCR (criminal) 428**, learned counsel for the State prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

The star argument raised by learned counsel for the petitioner is based on the judgment of the Hon'ble Supreme Court in Rajesh Kumar Gupta's case (supra). In fact, after going through the judgments relied upon by learned counsel for the petitioner, none of them has been found to be of any help to the petitioner, because learned counsel for the petitioner was relying upon an overruled judgment of Rajesh Kumar Gupta's case (supra). This was the precise reason that the matter was referred to the larger bench of the Hon'ble Supreme Court to reconsider the law laid down in Rajesh Kumar Gupta's case (supra). A three Judges Bench of the Hon'ble Supreme Court in its judgment in **Union of India and another Vs. Sanjeev V. Deshpande, 2014 (13) SCC 1**, has specifically overruled the abovesaid judgment of Rajesh Kumar Gupta's case (supra), which was wrongly relied upon by the learned counsel for the petitioner.

During the course of hearing, when learned counsel for the petitioner was confronted with the abovesaid fact situation, he had no answer and rightly so, it being a matter of record. In fact, this was the precise issue, which fell for consideration before the Hon'ble Supreme Court. After a detailed discussion on the subject and analysis of the entire earlier case law, the Hon'ble Supreme Court in para 34 and 35 of its judgment in **Sanjeev V. Deshpande's** case (supra), observed as under:-

On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules

permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of DEALING IN psychotropic substances and the conditions subject to which such DEALING IN is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta's case in our view is wrongly decided.

In view of our conclusion, the complete analysis of the implications of Section 80 of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs

generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further

[15] Section 80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

In view of the abovesaid law laid down by the Hon'ble Supreme Court in Sanjeev V. Deshpande's case (supra), which is the latest one on the subject, instant petition is bound to fail, because no contrary judgment has been brought to the notice of this Court, at the instance of the petitioner.

Further, the view taken by this Court also finds support from the judgments of this Court in Inderjeet Singh's case (supra) and Vinod Kumar's case (supra) and the law laid down in these two judgments stands duly approved by the Hon'ble Supreme Court in Sanjeev V. Deshpande's case (supra).

It is also pertinent to note here that when learned counsel for the petitioner was confronted with the heavy recovery of 3800 tablets of diazepam, 1,76,000/- tablets of diazepam (batch No. 1969), 850 injections-cum-compose, 1500 Kgs diazepam powder from the conscious possession of the petitioner and that too without any valid permit or licence, again he had no answer and rightly so, it

being a matter of record. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned order, framing charge against the petitioner, and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present criminal revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

9.10.2015
Ak Sharma