

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14264 of 2013
DECIDED ON: May 13, 2016

SANDEEP KUMAR @ SHINDA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.K. Passi, Advocate for
Mr. Parminder Singh-I, Advocate,
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Section 482 of the Code of Criminal Procedure, Sandeep Kumar @ Shinda has sought quashing of FIR No. 254, dated 22.11.2012, under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act"), Police Station Civil Line, Bathinda, District Bathinda, and all consequential proceedings arising therefrom.

2. Tersely put, the case of prosecution is that on November 22, 2012 at about 12 noon, near the area of Street No.5-B, Near Bhatti Road, Bathinda, petitioner was allegedly found in possession

of 4 bags containing 200 bottles of Rexcof weighing 100 mls in each bag i.e. 800 bottles in total regarding which he could not produce any permit, licence or bill. Accordingly, after taking samples and completion of other formalities, he was arrested in this case and FIR in question was registered against him.

3. The contention of learned counsel for the petitioner is that the petitioner is the sole proprietor of firm M/s New Himanshu Pharma, 4932, Balaji Market, Gandhi Market, Bathinda and is a registered Pharmacist. He has been issued licence by the Registrar of Punjab State Pharmacy Council vide certificate No. 16828, dated 17.05.1995 (Annexure P-2). He is also a holder of drug licenses bearing No.22770, dated 21.08.2012 (Annexure P-3) and 22556, dated 21.08.2012 (Annexure P-4), which have been issued by the Directorate Health and Family Welfare, Punjab vide letter dated 23.08.2012 (Annexure P-5).

4. Learned counsel for the petitioner further contends that the medicine Rexcof is a product of Cipla, a known pharmaceutical company and the said company has displayed it i.e. Rexcof to be schedule "H" drug. Even, the Drug Controller General of India vide notification No. SO-826(E) dated 14.11.1985 issued under the NDPS Act has also exempted certain drugs which are manufactured one containing narcotic drug to the extent permitted in respect to Codeine in entry No. 35 of the said schedule. While referring to the judgement captioned as "**Jagjit Singh vs. State of Punjab**" decided on 16.07.2012 in CRM-M-5632 of 2010 (O&M), learned counsel for the petitioner further contends that the drugs Codeine-Phosphate being covered at Serial No. 35 of the

notification No.SO-826(E) dated 14.11.1985 and, as such, is not covered under the provisions of NDPS Act.

5. While concluding his arguments, learned counsel for the petitioner submits that the instant case is squarely covered under the aforesaid judgment and, as such, the FIR in question is liable to be quashed.

6. On the other hand, learned State counsel while controverting the various submissions raised by learned counsel for the petitioner has submitted that Codeine-Phosphate has not been permitted to be sold by the firm, of which, the petitioner is the proprietor and, as such, the contention that the Rexcof to the tune of 800 bottles of 100 mls each was purchased through valid bill is of no help to the petitioner. Moreover, the recovery has also not been effected from the premises of M/s New Himanshu Pharma, Balaji Market, Gandhi Market, Bathinda. Rather, it was from a public place in Street No. 5, near Bhatti Road, Bathinda. Report of Forensic Science Laboratory (Annexure R-1) clearly postulates that the samples contain Codeine-Phosphate and chlorpheniram-ine Maleate. Rexcof cannot be kept or retained even by licence holder as it contains Codeine, which is a banned drug under the Drugs and Cosmetics Act, 1940 and the Rules framed under. Thus, no case is made out for quashing of the FIR.

7. After bestowing due consideration to the rival submissions put forth by learned counsel for the parties and scanning the various documents available on file, this Court is of the considered view that the registration of FIR under Section 22 of the NDPS Act is not justified and

deserves to be quashed being against the procedure as well the settled canons of law.

8. Undeniably, the petitioner is a sole proprietor of M/s New Himanshu Pharma situated at Balaji Market, Gandhi Market, Bathinda and has got drug licence No. 22770 dated 21.08.2012 (Annexure P3) and 22556, dated 21.08.2012 (Annexure P-4) which are valid till 20.08.2017. 800 bottles of 100 mls each of Rexcof were allegedly recovered from the possession of the petitioner on 22.11.2012 when he could not produce or furnish the licence(s) or the bill, which were subsequently presented by him during the investigation of the case before the investigating agency. The bill (Annexure P-7) is in respect of 800 bottles of Rexcof containing syrup of 100 mls. each, which is dated 21.11.2012 i.e. a day prior to the alleged recovery. Moreover, the petitioner is a whole seller and is not supposed to sell the medicine to the customers.

9. Here, it would also be pertinent to mention that Drug Controller General India, Directorate General of Health Services, New Delhi has also written letters to all the State Drugs Controller in India on 26.10.2005 vide letter (Annexure P-10) regarding sale of cough linctus containing Codeine Phosphate, which clearly clarifies that by virtue of the fact that cough syrups preparation contain Codeine and other salts, they do not fall under the provisions of NDPS Act and Rules of 1985 but they fall under Schedule "H" of the Drugs and Cosmetics Rules and are governed by the said Rules. It has further been clarified in the said letter that though stocking and sales of these drugs do not attract the

provisions of NDPS Act and Rules 1985, however, these formulation are prescriptions drugs and are to be dispensed on the prescription of a registered practitioner(s) only. It has further been clarified that such a drug containing Codeine comes within the purview of entry No. 35 and, as such, not covered under the provisions of NDPS Act.

10. Rexcof is a drug of Cipla Limited, Mumbai. It has also clarified to all its Super Distributors vide (Annexure P-11) that Rexcof syrup (Codeine Phosphate 10mg+CPM 4mg/5ml) is exempted from the provisions of NDPS Act and Rules there under. In this regard reference has been given to the government notification No.SO-826(E), dated 14.11.1985.

11. It would also be important to note that a committee was constituted by the State Government to see whether such like cases are covered under the provisions of NDPS Act or under Drugs and Cosmetics Act, 1940. **Jagjit Singh vs. State of Punjab** (supra) relied upon by the learned counsel for the petitioner almost covers the instant case. In the said case, the drug containing Codeine-Phosphate and chlorpheniram-ine Maleate was recovered. The case was referred to the Committee for its report and the Committee vide its report gave its opinion which reads as under:-

“Review committee have gone through the case file and concerned record of this case. The Drugs Codeine Phosphate and chlorpheniram-ine Maleate in which the Drug Codeine Phosphate is covered at No. 35 of Notification No. 826 E Dtd. 14.11.1985 & hence not covered under NDPS Act, 1985 being in the form of Drugs dosage formulation whereas Drugs

Chlorpheniramine, Maleate is a schedule H Drug under Drugs and Cosmetics Act, 1940. The Drug Dextropropoxyphene Hcl is covered at No. 87 of Notification No. 826 E Dt. 14.11.1985 & hence not covered under NDPS Act, 1985 being in the form of Drugs dosage formulation. Whereas Drugs Dicyclomine Hcl and Paracetamol are schedule H Drugs under Drugs and Cosmetics Act, 1940. As per record M/s Arsh Medical Agencies Ajit Road opp. St. No. 25/A Bathinda, Distt. Bathinda bearing Drugs license No. 18108-OW & 17906-W granted on 27.1.2006 which are valid upto 26.1.2011 & the firm has further applied for its renewal vide challan No. 503566 dtd. 25.2.2011. In these licenses Sh. Jagjeet Singh S/o Sh. Jaskaran Singh is the sole prop. Of the firm and Sh. Pilot Kumar S/o Sh. Gheeta Ram is the competent person of the firm. At the time of occurrence petitioner Jagjit Singh s/o Jaskaran Singh R/o Ghudda Distt. Bathinda did not produce valid drugs licences and purchase bills for drugs recovered from him on date of recovery. Hence Committee is of the opinion that Jagjeet Singh may be prosecuted under Section Drugs and Cosmetics Act, 1940 and Rules 1945”.

12. Adverting to the facts of the case in hand, the recovery of 800 bottles of Rexcof even though, it contains Codeine-Phosphate and chlorpheniramine Maleate being covered at Serial No. 35 of the notification No. SO-826(E), dated 14.11.1985 do not attract punitive provisions of NDPS Act, especially, in the circumstances that the petitioner is a holder of the licence and has purchased the medicines through valid bill.

13. In the light of what has been discussed above, the petition is allowed. Consequently, FIR No.254, dated 22.11.2012, under Sections

22 of the NDPS Act along with all consequential proceedings, which have been arisen therefrom stand quashed.

May 13, 2016
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(JASPAL SINGH)
JUDGE