

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

CRR No.1989 of 2013

Date of Decision: February 16, 2016

State of Punjab

...Petitioner

Versus

Jagbir Singh @ Jagveer Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. J.S. Brar, AAG, Punjab

Mr. Sunny Singla, Advocate
for the respondent.

FATEH DEEP SINGH, J.

CRM No.30133 of 2013

Heard on application for condonation of delay in
filing of petition.

In view of the grounds mentioned in the application
for condonation of delay and in the light of settled position that a litigant
cannot be denied access to justice on hyper technical grounds and in
the interest of justice taking a lenient view, delay of 86 days in filing the
present petition stands condoned.

CRM stands disposed off.

CRR No.1989 of 2013

The state aggrieved over the findings of the
learned Judge, Special Court, Sangrur dated 1.12.2012
discharging the accused on the grounds that the prescribed
minimum required quantity of Diphenoxylate hydrochloride is 2.5

mg per tablet whereas, the one analysed by the laboratory has come to be 2.3 mg per tablet, therefore, no offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') is made out and, thus, discharged the accused purely on the ground of being requisite salt less than the prescribed quantity as per entry No.58 of the Act.

Heard, learned counsel for the parties and perused the records of the case. Learned State counsel has contended that Ministry of Finance, Department of Revenue vide its notification dated 18.11.2009 as notified by the Central Government has notified that the entire mixture is to be taken on the whole in determining the quantity and which is reproduced as below:-

“Ministry of Finance (Department of Revenue) Notification New Delhi, the 18th November, 2009 S.O. 2941 (E)- In exercise of the powers conferred by clause (vii a) and (xxiii) of Section 2 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985) the Central Government, hereby makes the following amendment in the Notification S.O. 1055 (E), dated 19th October ,2001, namely:- In the Table at the end after Note 3, the following Note shall be inserted, namely;- In the Table at the end after Note 3, the following Note shall be inserted, namely:- (4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just is pure drug content”.

Thus, it flows from this that this notification covers recovery as in the present case which has been made on 13.7.2012 and which argument could not be controverted on behalf of the respondent-accused. This Court in placing reliance on Division Bench view of this Court in **Amarjit Singh vs. State of Punjab CRM No.35827** decided on 26.05.2011 has held that

entire mixture is to be taken into consideration from the date of publication of notification dated 18.11.2009. Thus, for all practical purposes this notification being a part of the Statute needs to have been considered by the Court below which has failed to do so and, thus, has run into an error, thereby, passing of the impugned findings which are highly unsustainable and uncalled for .

In view of this, impugned orders dated 1.12.2012 passed by the Court below discharging the accused are hereby set aside by way of acceptance of the instant revision petition, whereby, the matter is remanded back to the trial Court to proceed ahead into the matter in accordance with law.

(FATEH DEEP SINGH)
JUDGE

February 16, 2016
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