

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

CRR No.4742 of 2015 (O&M)
Date of decision: 19th August, 2016

Rajesh Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Harminder Singh, Advocate for the petitioner.

Mr. J.S. Brar, Asstt. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

The initial history and background of the present criminal revision petition preferred by convict/revisionist Rajesh Kumar needs to be gone into before adjudicating on merits the present petition.

The State through its Drug Inspector had filed against the accused, now revisionist Rajesh Kumar, a criminal complaint under Section 27(b)(ii) read with Section 18(c), Section 28 read with Section 18-A of the Drugs and Cosmetics Act, 1940 (in short, 'the Act'). The primary allegations of the prosecution in this complaint were to the effect that on 28.06.2006 Manjinder Singh Dhillon, then Drug Inspector, Gurdaspur visited and inspected the premises of M/s Sharma Medical Hall, Sarna, Pathankot. The accused happens to be the proprietor and in-charge of this chemist shop who happened to be actively participating in the running of the shop at the time of this inspection. The Drug

Inspector after undergoing necessary formalities under the Act and the Rules framed thereunder, seized by way of samples 8 types of allopathic drugs which were stocked and were being offered for sale to the prospective customers. The necessary steps as per the Act and Rules were undertaken and upon analysis and necessary steps, the competent authority had come to the satisfaction that the accused had committed an offence and contravened the provisions of Section 18(c) of the Act, having stocked and offered for sale drugs for which he was not holding any permissible and legitimate licence which is punishable under Section 27(b)(ii) of the Act and thus had contravened the provisions of Section 18A of the Act. The accused was put to trial wherein the prosecution examined three witnesses. The accused denied the allegations in his stand under Section 313 Cr.P.C. and had tendered into his defence receipt challan Ex.D1 and licence Ex.P2, and closed the evidence. Consequent thereupon, vide judgment of conviction and order of sentence dated 17.03.2014 the Court of learned Chief Judicial Magistrate, Pathankot held the accused guilty for commission of offence under Section 18(c) and 18A of the Act and sentenced him to undergo rigorous imprisonment for a period of six months under Section 18A of the Act and to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- under Section 18(c) of the Act, in default of payment of fine to further undergo rigorous imprisonment for one month. Against these findings, the convict had filed an appeal before the learned first appellate Court. It was during the course of arguments of the appeal the

petitioner had filed an application under Section 391 Cr.P.C. read with Section 311 Cr.P.C. seeking indulgence by way of securing additional evidence to enable him to produce the original copy of form 16 dated 28.06.2008 to confront the said document to the complainant. It was through impugned orders dated 03.10.2015, the Court of learned Additional Sessions Judge, Pathankot dismissed the application and that is how the petitioner is before this Court in this criminal revision petition.

Heard at length Mr. Harminder Singh, Advocate on behalf of the petitioner, Mr. J.S. Brar, Assistant Advocate General, Punjab representing the respondent/State and perused the records of the case.

It is by no means a disputed fact that this receipt challan by way of form 16 was duly exhibited before the trial Court at the time of the trial and since the filing of the complaint forms part of that record as well on which allegations the prosecution has relied upon and had also been exhibited as PW3/B. To the very query of the Court, learned counsel for the petitioner was purely at loss of words as to what prevented the petitioner from raking up such a plea which is purely to be adjudicated while deciding the entire matter on merits. It was neither the stand of the accused taken during cross examination of PWs or in his statement recorded under Section 313 Cr.P.C. Rather a look at the same reveals that the petitioner had never bothered to rake up such an issue of which he was fully aware at the time of going to trial, during the trial

and before the pronouncement of judgment of conviction by the trial Court.

It has been rightly contended by learned State counsel that had it been so, as is sought to be argued before this Court, that the petitioner accused had any such reservations at the time of trial over this document, he was well within his rights to have raked up such a plea at the trial which was the most appropriate stage and which to the mind of this Court can only be adjudicated by examining experts who are well conversant with deciphering handwriting/documents and not by mere bringing on the record such documents which are already relied upon by the prosecution as well as the defence. Thus, even by that score, the stand of the petitioner is highly untenable. Thus, in the totality of what has been detailed and discussed above, there is apparently no illegality or impropriety committed by the courts below.

Finding no merits, the instant revision petition as such stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 19, 2016
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No