

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

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**CRM-25491-2017 in/and
CRA-S-619-SB-2017
Date of Decision: 10.12.2018.**

Vikas Kumar

....Appellant.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Bipan Ghai, Sr. Advocate, with
Mr. Paras Talwar, Advocate for the appellant.

Mr. Ajay Pal Singh Gill, Deputy Advocate General, Punjab.

Shekher Dhawan, J.

Today the matter was fixed for arguments on the application for suspension of sentence of the applicant-appellant. However, learned senior counsel for the appellant submitted that he be allowed to argue the main appeal.

In view of the submissions made by learned senior counsel for the appellant, the main appeal, which stands admitted, is taken on board today.

CRM No.25491 of 2017 stands disposed of.

Main Appeal

1. Present appeal is against the judgment of conviction and order of sentence dated 18.01.2017 passed by learned Judge, Special

Court, Patiala, whereby the appellant was held guilty and convicted under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and was sentenced to undergo rigorous imprisonment for a period of 10 years and to make payment of fine of Rs.1,00,000/-. In case of default of payment of fine to further undergo rigorous imprisonment for a period of one year, in case F.I.R. No.124 dated 23.08.2012 under Section 22 of the Act, registered at Police Station Lahori Gate, Patiala.

2. Learned senior counsel for the appellant contended that appellant-Vikas Kumar was running a chemist shop and there was tenancy dispute with the landlady and, as such, the appellant was involved in a false case at the instance of owner.

3. Learned senior counsel further contended that mere alleged recovery of medicines containing salt Codeine Phosphate, dextropropoxyphene Napsylate, dextropropoxyphene Hydrochloride and Diphenoxylate Hydrochloride is not enough to say that accused-appellant committed any offence under the provisions of the Act. As per notification dated 23.05.2013, sale of dextropropoxyphene hydrochloride was suspended in the year 2013, but there was no notification regarding suspension of other salts i.e. Codeine Phosphate and Diphenoxylate Hydrochloride in the medicines.

4. While arguing further, learned senior counsel for the appellant contended that though not admitted, if it is assumed that recovery of tablets/capsules was effected from the possession of the accused-appellant, even then he has not committed any offence under the provisions of the Act as the appellant was having the licence to that

effect. Earlier he had obtained licence for possession of drugs and that licence was valid till 28.11.2007, however, before expiry of the licence, the appellant had applied for renewal of licence on 26.11.2017, but for one reason or the other, the said licence was not issued to the appellant.

5. Learned State counsel had sought time to verify this fact whether the appellant had applied for renewal of licence before expiry of the due date i.e. 28.11.2007 or not and on instructions from ASI Balwinder Singh contended that in fact the appellant had applied for renewal of the licence on 26.11.2007.

6. Rule 63 of the Drugs and Cosmetics Rules 1945 (for short, 'the Rules') provides that duration of licence is to be specified and that is to be valid for a period of five years and for renewal of licence, the same has to be done before the expiry of the said date. For ready reference, Rule 63 of the Rules is extracted hereunder:-

63. Duration of licence. -- *An original licence or a renewed licence to sell drugs, unless sooner suspended or cancelled, shall be valid for a period of five years on and from the date on which it is granted or renewed:*

Provided that if the application for renewal of licence in force is made before its expiry or if the application is made within six months of its expiry, after payment of additional fee, the licence shall continue to be in force until orders are passed on the application. The licence shall be deemed to have expired if application for its renewal is not made within six months after its expiry.

63A. Certificate of renewal of a sale licence. -*A certificate of renewal of a sale licence in Forms 20, 20-A, 20-B, [20-F, 20-G], 21, 21-A and 21-B shall be issued in Form 21-C.]*

63 B. *Certificate of renewal of licence. __ A certificate of renewal of a licence in Form 20BB or Form 21BB shall be issued in Form 21-CC.”*

7. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that Rule 63 of the Rules makes it ample clear that if the appellant had already applied for renewal of licence on 26.11.2007 i.e. before the expiry date of 28.11.2007, there was no violation of Rule 63 and learned trial Judge has not considered this material aspect while recording the judgment of conviction.

8. In view of the above, the present appeal is accepted, the judgment of conviction and order of sentence are set aside. The appellant is acquitted. He be released forthwith from custody if not required in custody in any other case.

(SHEKHER DHAWAN)
JUDGE

10.12.2018

jitender/som

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No