IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.31554 of 2009 (O&M)
Date of decision: 12th October, 2017

Sunil Kumar

… Petitioner

Versus

State of Punjab and others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the petitioner.

Mr. Sandeep Kumar, Dy. Advocate General, Punjab
for the respondents/State.

FATEH DEEP SINGH, J.

The diminishing line between the very applicability of Drugs and Cosmetics Act, 1940 (as amended upto date) (in short, 'Drugs Act') viz-a-viz with the introduction of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act' or 'the Act') is the brief point that has come to sublime in the present petition whereby the petitioner accused Sunil Kumar, who claims to be the sole proprietor of firm M/s Anand Medical Hall, has invoked these provisions for exercise of inherent powers seeking quashment of FIR No.96 dated 31.10.2009 registered with Police Station Maur, District Bathinda under Section 22 of the NDPS Act and all consequences and proceedings arising therefrom.

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The brief facts that needs to be highlighted emancipates from the FIR (Annexure P7) whereby a police team headed by Inspector/ incharge of Anti Narcotic Cell on 31.10.2009 along with other police officers upon receipt of secret information that the present petitioner along with his employee Jagsir Singh alias Joga had stock of intoxicating drugs and use to sell the same to his customers through Jagsir Singh alias Joga and if a raid is conducted such banned articles/substances can be recovered. It is consequent thereupon, the police have raided the premises as per this information leading to recovery of manufactured drugs which are well enumerated in the FIR (Annexure P7) and which need not be reproduced for the sake of brevity and are taken to be a part and parcel of this order, leading to arrest of Jagsir Singh alias Joga and it is claimed by the police that the petitioner slipped away from the spot.

The sole question that has come about is the very initiation, continuation and prosecution of the petitioner under the provisions of NDPS Act. The Act was introduced with an intent to bring about stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances and has been brought into force with effect from 14.11.1985 on the basis of Government notification No.S.O.821(E) dated 14.11.1985.

The learned State counsel Mr. Sandeep Kumar, Deputy Advocate General, Punjab has duly acceded to the contentions of Mr.Sunil Chadha, learned Senior Advocate assisted by Ms.Swati Verma that the entire recovery pertains to manufactured drugs as covered under

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Schedule 'H' of the Act which has also been enumerated in the petition and which fact even otherwise is not specifically denied in its reply by the State and who have neither countered the pleadings and the arguments put forth based on Annexure P1 which is a license issued to sell, stock, exhibit or offer for sale or distribute by retail, drugs specified therein.

Form 20B under Rule 61(1) of the Drugs and Cosmetics Rules, 1945 (in short, 'Drugs Rules') which enumerates besides other stipulations that the licensee shall comply with the provisions of the Drugs Act and the rules framed thereunder and any drugs so sold shall be purchased from a duly licensed dealer or from a duly licensed manufacturer and shall, consequent upon change of constitution of the firm, inform the authority.

'Manufactured Drug' has been well defined under Section 2 Clause (xi) of the NDPS Act and is reproduced as below to lay emphasis:

> *"2(xi) 'manufactured drug' means*
>
> *(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;*
>
> *(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;*
>
> *but does not include any narcotic substance or preparation which the Central Government may, having regard to the*

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available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;"

The stand of the petitioner is not agitated by the State in its reply and has rather sought shelter under the vague and ambiguous pleadings bringing about that the accused was indulging in sale of narcotic drugs and psychotropic substances i.e. intoxicating bottles, capsules, tablets and injections etc. habitually to the people without any medical prescription and without having any valid permit and license on large scale under the shelter of his medicine business and promotes drug addiction in the society. But with all fairness, Mr. Sandeep Kumar, learned Deputy Advocate General has conceded that even Drugs Inspector has not come forward inspite of his repeated endeavours to deny issuance of license (Annexure P1) to the Firm which is a sole proprietary concern of the petitioner and is well enumerated in the license which was issued on 21.06.2001 and contains the conditions of license. Though admittedly, learned State counsel concedes that the petitioner is not entitled to sell Schedule 'X' drugs under this license, but this is not the case of the State in the light of pleadings and arguments which are not controverted by the State that all the drugs fall within Schedule 'H'. As per Annexure P2 issued by the licensing authority, Assistant Drugs Controller Punjab, the license is in force from 21.06.2001 to 31.12.2002. Subsequently, as is there in the submissions of Mr.Chadha, by virtue of

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Annexure P3, which is Form 21-C under Rule 36-A of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (in short, 'NDPS Rules') license bearing No.14342-NB has been issued under Form 20, 20-A, 20-B, 20-F, 20-G and license No.14342-B by way of Form 21, 21-A, 21-B to the Firm of the petitioner and was valid from 01.01.2003 to 31.12.2007. It is on the basis of a letter addressed to the licensing authority (Annexure P4) made on 31.12.2007, the petitioner claims to have deposited necessary fee by treasury challan No.J-246858 dated 31.12.2007 which was attached with the application for renewal of these two drug licenses to enable him to sell drugs by way of retail for the period 2008-2012, and which too is not disputed by learned State counsel and has changed the qualified person and detailed it therein. Furthermore, by way of Form 19 (Annexure P5) petitioner has filled in all the necessary prerequisites which is dated 29.12.2007 and from the correspondence addressed by District Drugs Inspector, Bathinda to the petitioner side (Annexure P6) which again could not be displaced and is dated 04.09.2009, much prior to the present occurrence which is alleged to have taken place on 31.10.2009, it is specifically mentioned and the contents of which needs to be reproduced as below:

> *"Your competent person Smt.Priya Goyal, Pharmacists has informed this office that she has left the job of your firm w.e.f. 06.08.2009 and, therefore, you cannot conduct any sale/purchase from 06.08.2009 and this firm may be closed. You are directed to appoint a new competent person and intimate the same to this office.*

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Sd/-
District Drugs Inspector,
Bathinda"

A close look at it shows that since the competent person, the pharmacist, has left the job of the Firm with effect from 06.08.2009, the petitioner-sole proprietor of the Firm, in whose name the license has been issued, has been asked not to conduct any sale/purchase from 06.08.2009 and directed to appoint a new competent person and intimate to the office. Thus, from this contention which is sought to be corroborated by learned counsel for the petitioner that the license issued to the petitioner was neither revoked nor suspended and he was only restrained from conducting any sale/purchase business.

Though learned State counsel has sought to fortify his arguments by placing reliance on Rule 66-A of the Drugs Rules, however, in the light of arguments of the petitioner side, the same applies to cases where a license has been cancelled and the person who wants to dispose off his goods under that very license shall apply to the licensing authority for this purpose, but this eventuality as per the stand of the State has not arisen as there is no cancellation of the license or its revocation and rather to the mind of this Court, the transactions have been put to abeyance. To add to the woes of the State, the Drugs Rules by way of Rule 72 prescribe duration of license which enumerates that an original license or a renewed license in Form 25 (Form 25-B or Form 25-F) unless sooner suspended or cancelled shall be valid for a period of five

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years on and from the date on which it is granted or renewed, and a proviso has been made to it that the application for renewal of license is supposed to be made before the expiry of the same and which has been done by the petitioner in the light of what has been discussed above, and it further stipulates that the license shall be deemed to have been expired if the application for renewal is not made within six months of its expiry.

This Court is really saddened over the manner in which the licensing authority has gone about in this duty and thus, it also brings forth on the basis of Annexure P6 and Annexure P4 that the licenses which were supposed to expire as on 01.01.2008, were applied for on 31.12.2007 when the requisite fees and request for renewal from 01.01.2008 to 31.12.2012 has been made and received by the licensing authority of the State and that is how it comes about that letter (Annexure P6) has been issued, invariably suggests that the District Drugs Inspector, Bathinda has renewed the license as per this request for the period 2008-2012 when it has stopped sale/purchase with effect from 06.08.2009 when the pharmacist has left the job of the Firm, are matters of serious consequence that the State has failed to take note the fact and as is acceded to even today in the submissions by learned State counsel that as on date the license has neither been revoked nor cancelled and is in force and still holds good, shows the pure contradictory stand of the State.

Besides this, The Punjab Narcotic Drugs and Psychotropic Substances Rules, 2012 (in short, 'the Punjab Rules'), terms 'licensed dealer' by way of Section 2 Clause (viii) to mean a person who has

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obtained a license under these rules for wholesale of manufactured drugs other than on prescription, and Rule 17 under Chapter III of these Rules makes it emphatically clear that a person who is lawfully authorized to possess such manufactured drugs cannot be held to be in unlawful or unauthorized possession, contrary to these rules, and which is reproduced as below to lay emphasis:

> *"17. Possession of manufactured drugs. – Subject to the provisions of these rules, no person shall be allowed to possess any manufactured drugs unless the person is lawfully authorized to possess the same under these rules."*

By virtue of Rule 27, the Punjab Rules authorize the Drugs Controller of the State of Punjab and is referred to as the licensing authority to grant to a chemist or a dealer, a license on payment of such fees as may be notified for enabling him to sell or distribute manufactured drugs other than the prepared opium and coca leaf, and bars only a person who is not having a license. Under the Drugs Rules, the license shall be in co-existence with the validity period of the license so granted and it is only when the license granted under the Drugs Rules is suspended or cancelled, debars a person from selling such manufactured drugs.

It is not the case of the State as per their own pleadings and arguments that the petitioner licensee had in his possession drugs in quantities in excess of his license in terms of Rule 27 of the Punjab Rules. To the very query of the Court, as has been contended by

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Mr.Chadha, but no evidence is brought before the Court that the alleged haul of manufactured drugs is not from Jagsir Singh alias Joga when the admitted stand is that the petitioner was never apprehended at the spot and it is not their case as well that the accused was in the process of selling manufactured drugs in violation of the license, when Rule 29 of the Punjab Rules empowers a licensed dealer to sell manufactured drugs as per the conditions of his license and there is a specific provision laid down under the Punjab Rules that provides eventualities of suspension or cancellation of a license or a permit granted under these Rules but it is not the case of the State that either the license so issued to the petitioner has been suspended or cancelled.

Assuming that there has been certain violation or breach of the license, at the most entails violation of the Drugs Act and Rules framed thereunder, for which prosecution under the NDPS Act certainly is undesirable and rather is misuse of the process by the authorities. Had it been so as it may be, neither there is anything to suggest that the licensee has failed to maintain correct accounts of all stocks of the drugs or record his transactions as required under Rule 46 of the NDPS Rules or that by virtue of Rule 52 of NDPS Rules after expiry or cancellation of license stocks of drugs remained in possession of the licensee and were not surrendered to the Drugs Inspector of his area, which is also not the situation contemplated in this case before this Court. Though Section 2 of the Drugs Act envisages that provisions of this Act shall be in addition to and not in derogation of the Dangerous Drugs Act, 1930 and any other

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law for the time being in force, and is pari-materia in line with the provisions of Section 80 of the NDPS Act which lays down that the provisions of the Act and the Rules made thereunder shall be in addition to and not in derogation of the Drugs Act or Rules framed thereunder.

This is precisely the very bone of contention in this matter. What bears out from the residue of all this is that whether the petitioner who as on date of his prosecution and alleged occurrence was holder of a legally valid license, which has neither been revoked nor cancelled or suspended and has only been asked not to transact business, can be hauled up under such stringent provisions of the Act, when there is not even an iota of evidence that the recovery was far in excess than the limits prescribed in his license or any of the constituents so recovered contained the contraband in excess of the permissible limits in violation of Rule 66(1) of the NDPS Rules or the conditions of license, for which reliance is sought to be placed on **'Tejpal Singh v. State of Punjab & others' 2008(2) RCR (Criminal) 414**, where further reliance has been placed on a view of the Hon'ble Supreme Court in the case of **'State of Uttaranchal v. Rajesh Kumar Gupta' 2006(4) RCR (Criminal) 974** wherein their Lordships have held that in case of violation of any such provisions of the Drugs Act or Rules framed thereunder, only the Drugs Inspector can lodge a complaint and no FIR can be registered by the police. Similar was the proposition of law laid down by this Court in **'Rajeev Kumar v. State of Punjab' 1997(4) RCR (Criminal) 846** on

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which reliance is sought to be emphatically placed by learned counsel for the petitioner.

None of these cited ratios could be displaced by learned State counsel and therefore, the applicability of provisions of the NDPS Act is seriously put to doubt and rather by all means is nothing but clear misuse of the process of Court. The semblance of resistance that is sought to be offered by learned State counsel that the pharmacist has left the job on 06.08.2009 much prior to the recovery, if taken to be a gospel truth at the most invites prosecution under the Drugs Act and Rules framed thereunder for violation of these provisions and especially when it is not the case of the prosecution that the petitioner was caught while in possession or was in the process of selling drugs, and there is nothing substantial to correlate the co-accused Jagsir Singh alias Joga with the petitioner by any means.

Though this Court is strictly of the view that while in the exercise of powers under Section 482 Cr.P.C. the Court is not supposed to function as a Court of appeal or revision, as laid down in **'M.Viswanathan v. M/s S.K. Tiles & Potteries P. Ltd. & others' 2008(16) SCC 390** and which envisages three circumstances under which inherent jurisdiction may be exercised (i) to give effect to an order under the Code of Criminal Procedure, (ii) to prevent abuse of the process of Court and (iii) otherwise to secure the ends of justice; and where reliance was placed on an earlier view of the Hon'ble Apex Court laid down in **'R.P. Kapur v. State of Punjab' (AIR 1960 SC 866)** wherein following

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categories of cases have been summarized where inherent power can and should be exercised to quash the proceedings:

(i) Where it manifestly appears that there is a legal bar against the institution or continuation e.g. want of sanction;

(ii) Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Similarly while discussing the ambit of Section 482 Cr.P.C. and cautioning the Courts below, the Hon'ble Supreme Court in **'State of Haryana v. Ch. Bhajan Lal and others' 1991(1) RCR (Criminal) 383** has laid down a proposition that the jurisdiction under Section 482 of the Cr.P.C. has to be exercised sparingly and with circumspection and that too in the rarest of the rare cases and that the Courts will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice; and has laid down seven kinds of cases where such a power should be exercised, which read as follows:

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(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Precisely, coming back to the present case, the very documentary evidence which is totally not refuted by the State and rather is there in their stand during the course of arguments that the documents produced to the department in question shows and undisputedly brings forth that the very allegations on the face of it contained in the FIR do not disclose it to be a cognizable offence justified for prosecution and even evidence so collected in support do not disclose commission of any offence triable under the NDPS Act and if at the most there is violation, the same is under the Drugs Act or the Rules framed thereunder for which offence is not cognizable and only a complaint lies, and that too by the Drugs Inspector, if so necessitated. Thus, to the mind of this Court,

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the criminal proceedings so initiated are an outcome of manifest mala fide and maliciously instituted to undo and circumvent and encroach upon the powers of the authorities to proceed under the Drugs Act and which has come about and taken cognizance of even by the present regime in the State that such like false implications needs to be curbed as it is leading to social malady, unnecessary and undesirable provocations affecting the very administration of justice by the State.

In what has been detailed and discussed above, the very registration of the FIR and initiation of prosecution against the petitioner certainly is nothing but totally an outright misuse of the process of the Court and needs to be curbed with a heavy hand thereby quashing the FIR and consequently the proceedings arising therefrom against the petitioner under the NDPS Act.

The petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

October 12, 2017
rps

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

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