IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1633 of 2013 (O&M)
Date of Decision: February 13, 2017

State of Punjab

...Petitioner

VERSUS

Ramesh Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the petitioner-State.

Mr.Amrinder Singh, Advocate
for the respondent.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner-State against respondent, challenging the impugned order dated 12.11.2012 passed by learned Addl. Sessions Judge, Sangrur, vide which accused-respondent was discharged.

Notice of motion was issued and learned counsel for the respondent appeared and contested the petition.

I have heard learned State counsel as well as learned counsel for the respondent and have gone through the record.

From the record, I find that in the present case, challan was presented in case FIR No.210 dated 19.08.2012 under Section 22 of the NDPS Act by the police of Police Station City Sangrur. The main allegations as prosecution version are that the accused-respondent was

apprehended while in possession of 29 phials of Rexnol Cough Syrup, 100ml in each phial. As per the report of chemical examiner, Salt Chlorpheniramine Maleate was found 9.7mg/5ml and codeine phosphate was found 3.8 mg/5ml per dosage. Learned trial Court in the impugned order dated 12.11.2012 held that Salt Codeine is covered in entry No.35 of notification dated 14.11.1985. As per entry No.35, the salt codeine more than 100 mg of the drug for dosage unit is required. Learned trial Court simply relied upon the entry in the notification and discharged the accused by holding that the Codeine was only 9.7 mg per dosage unit which is less than 100 mg, prescribed in the notification and also relied upon a report of Drug Inspector dated 09.11.2012 that sale Chlorpheniramine Maleate to the extent of 3.8 kg/5ml is not covered by provisions of NDPS Act.

Learned State counsel for the petitioner-State relied upon the judgment passed by Hon'ble Division Bench of this Court in ***Inderjeet Singh vs. Laddi and others vs. State of Punjab, 2014(3) RCR (Criminal) 953***, wherein it is held as under:-

> *35. The Central Government, therefore, by notification dated 19.10.2001 has specified 'small quantity' and 'commercial quantity' of various narcotic drugs and psychotropic substances by a table. Notification dated 18.11.2009 has been issued by the Central Government, which mentions that quantities shown in column 5 that relates to 'small quantity' and column 6 that relates to 'commercial quantity' of the table relating to respective drugs shown in column 2 that relates to the name of narcotic drug and psychotropic substance, is to apply to the entire mixture or any solution or any one or more of narcotic drugs or psychotropic substances of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure drug content. The intention of the said notification is to prevent and prohibit the use of narcotic drugs and psychotropic substances wherever there is a misuse of the said drugs for other than medicinal or therapeutic use. As has already been noticed various 'manufactured drugs' have been notified vide notifications dated 14.11.1985 and 29.1.1993. Section 21 of the NDPS Act*

provides for punishment for contravention in relation to manufactured drugs and preparations. The punishment prescribed is with reference to the quantity possessed. Therefore, the punishment which an offender is liable to be inflicted with in case he contravenes the provisions of Section 21 of the NDPS Act is dependent on the contravention of the quantity of drug that is involved. For purpose of determining the quantity as to whether it is small quantity, lesser than commercial quantity but greater than small quantity or commercial quantity is to be determined with reference to the notification providing a table as afore-mentioned specifying small quantity and commercial quantity to which Note 4 has been added vide notification dated 18.11.2009 mentioning therein that the quantity whether it is small quantity or commercial quantity relating to the drugs shown in column 2 is to apply to the entire mixture or any solution or any one or more narcotic drug or psychotropic substance of that particular drug in dosage form etc. wherever existence of such substance is possible and not just its pure content.

36. The manufactured drugs of which there has been a contravention in the present cases have been sold, purchased, distributed, stored, transported, carried etc. in a bulk form and mostly these are without proper licences or authorizations. In respect of such drugs which are carried in bulk form, the notification dated 18.11.2009 would apply and the question that these drugs contain an exception would not be applicable as the exceptions would apply when the drugs are for medicinal or therapeutic use. Besides, the quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words, the mere dosage of the manufactured drug in one capsule is not to be considered but the dosage in the number of capsules together is to be considered for the purpose of determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substances and preparations as mentioned therein to be manufactured drugs. Moreover, in case of contravention of Section 21 NDPS Act relating to manufactured drugs, Note 4 of the notification 18.11.2009 would apply that is to say that the quantity in respect of which there is a contravention is 'small quantity', 'lesser than commercial quantity but greater than small quantity' or 'commercial quantity' is to 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 etc. wherever existence of such substance is possible and not just its pure drug content. Therefore, the question of exceptions being provided in respect of drugs at serial No.16, 35, 36, 37, 48, 58, 70, 76, 83 and 87 of the notification dated 14.11.1985 is inconsequential when these drugs are carried in a bulk form and the entire quantity of the bulk is to be taken into

consideration and not per dosage specially when these are carried in violation of the D&C Act and the 1945 Rules that is to say are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization.

37. Similarly there are certain 'psychotropic substances' which have been mentioned in the Schedule of the NDPS Act and which are used for medicinal purposes also. The said 'psychotropic substances' can be manufactured in accordance with the conditions of a licence granted under the 1945 Rules. Except those substances which are not mentioned in the Schedule 'I' of the 1945 Rules for which purpose a licence can be granted under the said 1945 Rules, the others that is without licence or authorization would entail the violation of the NDPS Act and the NDPS Rules which would make out an offence under the said latter provisions. Therefore, the possession of a 'manufactured drug' which has been notified in terms of notifications dated 14.11.1985 and 29.1.1993 or 'psychotropic substances' and which are mentioned in Schedule 1 of the NDPS Act would entail prosecution either under the NDPS Act or the D&C Act. The fact that the prosecution has enforced a harsher provision of the NDPS Act than the normal provision of the D&C Act would not be of any consequence or significance.

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44. The common drugs that are mostly misused for purposes other than medicinal and therapeutic use are drugs like Codeine, Dextropropoxyphene and Diphenoxylate. These are mentioned at serial Nos.132, 146 and 156 respectively in Schedule 'H' of the 1945 Rules, and are also mentioned at serial Nos.28, 33 and 44 respectively in the notification specifying small quantity and commercial quantity of drugs by making a reference to clause (vii a) and (xxiii a) of Section 2 of the NDPS Act. Besides, these are also mentioned at serial Nos.35, 87 and 58 respectively of the notification dated 14.11.1985. Other drugs which are commonly misused are 'Alprazolam, Chlordiazepoxide, Delorazepam, Diazepam and Buprenorphine' which are 'psychotropic substance' and are mentioned at serial Nos.30, 36, 42, 43 and 92 of the Schedule to the NDPS Act with reference to clause (xxiii) of Section 2 of the NDPS Act. These are commonly and widely misused by drug traffickers for clandestinely indulging in drug trafficking to give an intoxicating or stimulating effect and not for medicinal or therapeutic use. Drug addicts are known to take huge discharge of these drugs at a time and even drug manufacturers are packing 100 tablets of pouch/bottles packing of some such drugs though some of them even fall under Schedule 'H' drug of the 1945 Rules and are to be sold in retail on a prescription by a registered medical practitioner only or are to be supplied to registered medical practitioners,

hospitals, dispensaries and nursing homes against signed order in writing which are to be preserved by the licencee for a period of two years in terms of Rule 65 (9) (a) and (b) of the 1945 Rules which reads as under:-

"(9) (a) Substances specified in Schedule H or Schedule X shall not be sold by retail except on and in accordance with the prescription of a Registered Medical Practitioner and in the case of substances specified in Schedule X, the prescriptions shall be in duplicate, one copy of which shall be retained by the licensee for a period of two years.

(b) the supply of drugs specified in Schedule H or Schedule X to Registered Medical Practitioners, Hospitals, Dispensaries and Nursing Homes shall be made only against the signed order in writing which shall be preserved by the licensee for a period of two years."

45. A perusal of the above Rule 65 (9) (a) and (b) mandates that the substances specified in Schedule 'H' or Schedule 'X' are to be sold in accordance with the prescription of a registered medical practitioner and in case of substances in Schedule 'X' the prescription is to be in duplicate and one copy of the same is to be retained by the licensee for two years. Insofar as the supply of drugs specified in the said Schedule 'H' or Schedule 'X' to registered medical practitioners, hospitals, dispensaries and nursing homes are concerned, the same are to be made only against the signed order in writing which are to be preserved by the licensee for two years. Therefore, it is not as if the drugs mentioned in Schedule 'X' can be carried by any licensee in any manner that he likes or can be received by him without adherence to the D&C Act and the 1945 Rules. The drugs which are mostly misused in Schedule 'H' as already noticed are Codenie, Dextropropoxyphene, Diphenoxylate, its salts at serial Nos.132, 146 and 156 of Schedule 'H'. These drugs fall within the ambit of 'manufactured drugs' as have been notified by the Central Government in terms of notification dated 14.11.1985 at serial Nos.35, 87 and 58 respectively and contravention of the same is punishable under Section 21 NDPS Act which envisages that whoever, in contravention of any provisions of this Act i.e. the NDPS Act or any Rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports interState, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable according to the quantity of the manufactured drug of which there has been a contravention and is specified therein.

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47. In terms of Rule 17, no person is to possess any manufactured drugs unless lawfully authorized under the Rules. Rule 18 relates to transport, import inter-state or export

inter-state of manufactured drugs. In terms thereof, a person referred to in Rule 17 i.e. a lawfully authorized person to possess manufactured drugs may transport, import inter-State and export inter-State manufactured drugs other than prepared opium and coca leaf in such quantity and in such manner, as may be specified in the permit issued by the Drugs Controller or the Director Ayurveda Punjab (for Unani and Sidha drugs) as the case may be, or any other officer authorized by the Government in this behalf in accordance with the provisions of these Rules. Therefore, the cases in which where persons are transporting manufactured drugs specially in a bulk form which is for use other than of medicinal or therapeutic purposes and thereafter, taking a plea that they are valid licence holders under the 1945 Rules, it would require to be ascertained as to whether they have a transport permit issued under Rule 18 of the Punjab NDPS Rules 2012. In terms of Rule 19, transportation, import inter-State or export interState of manufactured drugs by means of post is prohibited. Rule 23 relates to grant of passes for transport and export inter-State. The same reads as under:-

"23. Grant of passes for transport and export inter-state.- An inspector may grant, to a Licensed Manufacturer or Licensed Dealer, a pass in Form No. ND-3 and Form No. ND-4 for transport and export inter-State of manufactured drugs, other than the prepared opium and coca leafs not exceeding the quantity to which he is entitled to possess:

Provided that such transport and export pass shall not be granted except on the production of a permit signed by the competent authority of the State or district of destination."

Hon'ble Division Bench in ***Inderjeet Singh's case*** (supra), concluded as under:-

54. Therefore, the presiding officer of a Special Court dealing with NDPS cases wherever the need is felt and where the matter is being unnecessarily delayed may grant interim bail till the receipt of the FSL report and thereafter considered the case after the receipt of the report.

As a consequence of the above, it may be noticed that:-

(i) Manufactured drugs are those drugs which are defined in Section 2 (xi) of the NDPS Act and have been notified by the Central Government vide notification dated 14.11.1985 and subsequent notification dated 29.1.1993. The possession of such drugs in contravention of the NDPS Act and the NDPS Rules would entail criminal prosecution of the offender under Section 21 of the NDPS Act.

(ii) The mere fact that the drugs which are covered under 'manufactured drugs' under the NDPS Act and the NDPS Rules and psychotropic substances as mentioned in Schedule of the NDPS Act and Schedule I of the NDPS Rules and are also covered by the D&C Act and the 1945 Rules thereunder would not mean that the offender can be penalised only under the D&C Act and the 1945 Rules and not proceeded against the NDPS Act and the NDPS Rules. In case there is a contravention of the NDPS Act and the NDPS Rules, the stringent provisions of the latter can be resorted to.

(iii) A person possessing manufactured drugs in terms of the NDPS Act and the NDPS Rules is to strictly adhere to the provisions relating to sale, purchase, transport, carrying, storage, distribution etc. in accordance with the provisions of the D&C Act and the 1945 Rules as also the provisions of the Punjab NDPS Rules 2012.

(iv) For transportation of the 'manufactured drugs' a pass or permit in terms of Rule 18 of the Punjab NDPS Rules 2012 is to be possessed.

(v)It is to be ascertained in each case whether the manufactured drug, the contravention of which is alleged by a person falls within the permissible limits of the percentage of dosage provided for the drug by the notification dated 14.11.1985 and subsequent notification dated 29.01.1993 issued in exercise of power conferred by Section 2 (xi) (b) NDPS Act. However, the contravention of manufactured drug or possession of quantity in bulk is to be taken into consideration and not per dosage specially when there is a violation of the D&C Act and the 1945 Rules that is to say they are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization. The possession of quantity in bulk would be an indication that it is not for medicinal or therapeutic use but is sought to be misused by drug addicts and drug traffickers and would be treated as applicable to the entire quantity recovered of anyone or more narcotic drug or psychotropic substance of that particular drug in dosage forms and not just its pure drug content.

(vi) When a manufactured drugs are sold, purchased, distributed, stored, transported, carried etc. in bulk form, the notification dated 18.11.2009 issued by the Central Government in exercise of powers under Section 2 (viia) and (xxiiia) NDPS Act would apply and the question that these drugs contain an exception in terms of notification dated 14.11.1985 would not apply as the exceptions would apply when the manufactured drugs are for medicinal or therapeutic use.

(vii) The quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words the mere dosage of the manufactured drug in one capsule is not to

be considered but the dosage in the number of capsule together is to be considered for determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substance and preparations as mentioned therein to be manufactured drugs.

(viii) It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.

(ix) In relation to the search and seizure, the provisions of the Code of Criminal Procedure are to be followed. The instruction issued by the NCB should be circulated so these are followed as guidelines. The violation of the guidelines would not per se entail illegality or an irregularity unless it is shown the same has occasioned a failure of justice or resulted in prejudice.

(x) The guidelines laid down and directions issued by the Hon'ble Supreme Court in the case of ***Thana Singh v. Central Bureau of Narcotics*** *(supra) should be meticulously and strictly followed and steps should be taken to ensure their due compliance.*

(xi) For the sale, purchase, storage, carriage, transportation and use etc. of manufactured drugs, the provisions of the NDPS Act, the D&C Act, the 1945 Rules and the Punjab NDPS Rules, 2012 should be strictly adhered to and followed and violation of the same would necessarily entail its consequences including penal consequences.

In view of the law laid down by Hon'ble Division Bench of this Court, impugned order dated 12.11.2012 passed by learned Addl. Sessions Judge, Sangrur, is illegal, not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed. Learned trial Court is directed to proceed with the case as per law, after giving notice to the accused and procuring her presence.

February 13, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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