

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRR No. 3204 of 2014 (O&M)
Date of decision : 3.11.2017

Prem ChandPetitioner

vs.

State of PunjabRespondent

2) CRR No. 3455 of 2014 (O&M)

Hitesh KumarPetitioner

vs.

State of PunjabRespondent

3) CRR No. 2601 of 2014 (O&M)

Rakesh KumarPetitioner

vs.

State of PunjabRespondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Yogesh Gupta, Advocate for the petitioner
(in CRR-3204-2014)

Mr. Akshay Jain, Advocate for the petitioner(s)
(in CRR-3455-2014 and CRR-2601-2014)

Ms. Samina Dhir, Deputy Advocate General, Punjab.

...

H. S. Madaan, J.

Vide this judgment, I propose to dispose of three
revision petitions, bearing CRR-3204-2014, titled as 'Prem Chand vs.

State of Punjab, CRR-3455-2014 titled as 'Hitesh Kumar vs. State of

Punjab' and CRR-2601-2014 titled as Rakesh Kumar vs. State of Punjab', as all these three revision petitions are directed against separate orders passed by Judge, Special Court, Sangrur, framing charge for offences under Sections 18-A of the Drugs and Cosmetics Act punishable under Section 28 and 18 (c) of Drugs and Cosmetics Act punishable under Section 27 (b) (ii) of the Drugs and Cosmetics Act., against accused Prem Chand, Hitesh Kumar and Rakesh Kumar.

For the sake of convenience, facts are being taken from CRR-3204-2014.

Briefly stated, facts of the case, as per version of the prosecution/complaint are that on 11.9.2009 at about 4.00 P.M. Drugs Inspector, Sangrur, accompanied by some other officials, had inspected the premises of Prem Chand s/o Amar Nath at Mubarak Colony, Sangrur and he was found in possession of 34 types of allopathic drugs for sale and distribution at this residential premises. He was asked to produce purchase record or purchase bill of those drugs but he was unable to do so. As such, a complaint was filed in the Court of Sessions Judge-cum-Special Judge, Sangrur. During the pendency of complaint, petitioner moved an application for return of complaint on the ground that the complaint had been directly presented to Sessions Judge, Sangrur, in violation of provision of Section 193 Cr.P.C. and complaint was not maintainable. The then Special Judge, Sangrur, vide order dated 22.5.2013, accepted the application and returned the complaint to the complainant being not maintainable. Thereafter, complaint was presented to CJM, Sangrur, who committed the complaint to the Court of Special Judge, in the

light of Section 36 AB(2) of Drugs and Cosmetics Act in terms of notification dated 26.5.2011. The petitioner again moved an application for dismissing the complaint or return the complaint to the Court of CJM for the reason that the petitioner could not be charge sheeted in view of express provisions of Section 36 AB of Drugs and Cosmetics Act. However, such application was declined and consequently, charge was framed against the accused, which left him aggrieved and he has filed the revision petition before this Court, challenging the order in question.

Notice of the revision petitions was given to the respondent, which had put in appearance.

I have heard learned counsel for the parties, besides going through the record.

The main thrust of the arguments of counsel for the revision petitioner(s) has been that the offences are triable by the Court of Magistrate and not by Special Judge, Sangrur, in view of Section 36 AB of Drugs and Cosmetics Act; since Special Judge can deal with offences relating to adulterated or spurious drugs, which is not a case here.

Whereas learned State counsel has contended that Special Courts have been established by the Government of Punjab vide notification dated 26.5.2011 presided over by the Officers of the rank of Sessions Judge/Additional Sessions Judges to deal with various offences under Drugs and Cosmetics Act and it has been so done in consultation with Hon'ble the Chief Justice of this Court. My attention has been drawn to such notification, which clearly mentions

that the same had been issued in consultation with Hon'ble the Chief Justice of High Court of Punjab and Haryana, to designate the officers of the rank of Additional Sessions Judge, if there are more than one Additional Sessions Judge, then 2nd Additional Sessions Judge and if there is no Additional Sessions Judge, then Sessions Judge in each Sessions Division in the State of Punjab as Special Court for trial of offences punishable under Clause (a) and (b) of Section 13, sub-section (3) of Section 22, clauses (a) and (c) of Section 27, Section 28, Section 28A, and clause (b) of sub-Section (1) of Section 30 and other offences relating to adulterated drugs or spurious drugs under the aforesaid Act, in their respective Sessions Division. This notification makes it clear that in addition to trying other offences relating to adulterated drugs or spurious drugs, the offences under Drugs and Cosmetics Act specified in the notification are to be tried by the Special Court. Therefore, there is no ambiguity what so ever, in that regard.

Learned counsel for the petitioner(s) have raised various other points i.e. mere storage of drugs without any ingredients of sale is not an offence. This is a point touching merits of the case, which can be decided during the trial and not at this stage by this Court, while exercising revisional jurisdiction.

As regards the contention that Special Judge has not discussed the legal contentions raised in the application, that argument is also devoid of any merit. The order passed by Special Judge is well reasoned one, discussing all the important points involved in the controversy. He was required to discuss the points

which were relevant and not each and every contention which may not have any relevance to the controversy at all or which might not have much bearing on the adjudication of the controversy involved. Even otherwise, while framing charge the Court is not to give detailed reasoning which may be required while the accused is to be discharged at the stage of framing of charge. A Judge while framing charge against the accused is to see that whether there is enough material to justify the same, although the settled law is that charge can be framed on the basis of strong suspicion even.

Learned counsel have argued that in similar circumstances, other accused have been acquitted. However, I fail to find any logic in this argument. Let the petitioners face trial and if the state/complainant failed to prove charge against the accused conclusively and affirmatively then they may also earn acquittal. Incidentally, the judgments relied upon by the petitioner(s) is one delivered by the Special Judge and not by CJM or Judicial Magistrate. Therefore, finding no merit in the petitions, the same stand dismissed. However, nothing discussed above shall be construed as an opinion on the merits of the case.

(H.S. Madaan)
Judge

3.11.2017

chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No