

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I) CRM-M-29205-2018 (O&M)
Date of Decision:- 19.12.2018

Satpal ... Petitioner

Versus

State of Punjab through Drugs Inspector, Sangrur ... Respondent

(II) CRM-M-29315-2018 (O&M)

Satpal ... Petitioner

Versus

State of Punjab through Drugs Inspector, Sangrur ... Respondent

(III) CRM-M-29347-2018 (O&M)

Prem Chand ... Petitioner

Versus

State of Punjab through Drugs Inspector, Sangrur ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ishan Gupta, Advocate for the petitioner(s).

Mr. A.S. Sandhu, Additional Advocate General, Punjab.

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GURVINDER SINGH GILL, J.

1. Although in all the three above stated petitions, the challenge is to separate orders, all dated 9.3.2018 passed by learned Special Court, Sangrur during

the proceedings of three separate complaints under Section 18(c) read with Rule 62 and Section 18-A punishable under Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940, but since the complaints are based on identical facts and the issues raised in these petitions are also same, therefore, all the aforesaid three petitions are proposed to be disposed of together. For the sake of convenience, the facts pertaining to CRM-M-29205-2018 titled as 'Satpal Versus State through Drugs Inspector, Sangrur' shall be referred to and are extracted as under.

2. The petitioner assails order dated 9.3.2018 passed by learned Special Court, Sangrur, whereby an application filed by the petitioner for return of complaint instituted against the petitioner, for offence under section 18(c) punishable under section 27(b)(ii) and for offence under section 18A punishable under section 28 of Drugs and Cosmetics Act 1940 (hereinafter referred to as 'The Act'), has been dismissed.
3. Before referring to the contentions put forth by learned counsel for the petitioner, it will be beneficial to refer to some of the relevant facts, which are stated below in chronological order:-

11.9.2009 - A raid was conducted on the premises of the petitioner i.e. his residence House No.114, Ward No.3-A, Guru Nanak Colony, Sangrur. The petitioner was found in possession of huge quantity of Allopathic drugs for sale and distribution at his residence and for which he could not produce any valid drugs sale license or document to authorise possession of the same in the said premises.

10.10.2011 - A complaint was filed in the Court of Sessions directly.

- 22.05.2013 - Upon an application having been filed by the petitioner/accused under Section 201 Cr.P.C. for return of the complaint, the same was allowed vide order dated 22.5.2013 (Annexure P-2) and the complaint was returned to the complainant being not maintainable directly in the Court of Sessions, while observing that the complainant was required to institute a complaint in the Court of Competent Magistrate and that the Court of Sessions can take cognizance only after the same is committed as provided under Section 193 Cr.P.C.
- 12.8.2013 - The complainant thereafter filed complaint(Annexure P-1) before the Court of Magistrate, who committed the same to the Court of Sessions. Thereafter the case was entrusted to 2nd Additional Sessions Judge, Sangrur, which was the Special Court as per notification dated 26.5.2011(Annexure P-3).
- 17.4.2014 - An application was filed by petitioner seeking dismissal of complaint or in the alternative to return the complaint to the Court of CJM for further proceedings. The application was filed mainly on the ground that Special Courts had been constituted in terms of section 36AB only for trying offences pertaining to adulterated and spurious drugs only and that the case in hand not being a case of 'adulterated' or 'spurious' drugs, was triable by Magistrate.
- 21.7.2014 - The Special Court, Sangrur, while dismissing the aforesaid application held that a *prima-facie* case is made out against the petitioner for offence under Section 18-A of the Act punishable under Section 28 of the Act and also for an offence under Section 18(c) punishable under Section 27(b)(ii) of the Act, vide order dated 21.7.2014 (Annexure P-5). Charges were accordingly framed against the petitioner for said offences on the same day itself by the learned Special Court, Sangrur, vide charge-sheet dated 21.7.2014(Annexure P-6).

- 5.5.2015 - The petitioner preferred a revision petition i.e. CRR-3371-2014, challenging aforesaid order dated 21.7.2014, but the same was dismissed by this Court on 5.5.2015.
- 16.2.2018 - Yet another application filed by the petitioner for return of the complaint on the ground that Special Court can try offences pertaining to adulterated and spurious drugs only and that the present case was to be tried by Magistrate. Another ground raised therein was that since notification dated 26.5.2011 came later and offence pertains to an earlier period therefore notification can not be made applicable retrospectively so as to hold that the case is triable by Special Court.
- 9.3.2018 - The learned Additional Sessions Judge dismissed the aforesaid application vide order dated 9.3.2018(Annexure P-10), which has been impugned in this petition.
4. The learned counsel for the petitioner, while assailing the aforesaid order dated 9.3.2018(Annexure P-10) has made the following submissions:
- (i) *that the entire procedure adopted in the present case is defective inasmuch as it is a case where, the Special Court does not have any jurisdiction to try the petitioner as the offences in question are not such, which are to be tried by the Special Court since it is only cases pertaining to adulterated and spurious drugs which are to be tried by Special Court and that the present case admittedly is not a case of adulterated or spurious drugs.*
 - (ii) *that in any case, the offence in the present case had allegedly taken place in the year 2009, whereas the notification providing for constitution of Special Courts*

was published and came into force w.e.f. 26.5.2011 (Annexure P-3) and, as such, the same cannot be made applicable retrospectively and thus the petitioner can not be tried by Special Court.

5. I have heard learned counsel for the petitioner and also the learned State Counsel.
6. The scheme of the Act, provides for different types of punishments for different offences depending upon gravity of offences. The offences have been made triable by different types of Courts as well. Under the scheme of the Act, powers to try various offences are vested in different Courts broadly in the following manner:

S.No	OFFENCES	RELEVANT PROVISIONS REGARDING JURISDICTION
1.	Section 13 of the Act provides punishment for offences mentioned in Chapter III of the Act.	Section 15 of the Act provides that no Court inferior to Court of Metropolitan Magistrate or Judicial Magistrate shall try an offence punishable under Section 13 of the Act
2.	Section 27, 27A, 28, 28A, 28B, 29 and 30 provide punishment for offences mentioned in Chapter IV of the Act.	Section 32(2) of the Act provides that no Court inferior to a Court of Sessions shall try an offence punishable under Chapter IV of the Act
3.	Offences relating to adulterated and spurious drugs AND punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B, and clause (b) of sub-section(1) of section 30 and other offences relating to adulterated or spurious drugs	Section 36AB of the Act provides that said offences to be tried by a Court of Sessions designated as Special Court . (vide notification dated 26.5.2011, issued by Govt. of Punjab, the 2 nd Addl. Sessions Judge in each Sessions Division has been designated as Special Court under the Act in State of Punjab)

7. Apart from the above mentioned broad classification of offences and Courts, section 36A of the Act provides for holding a summary trial for offences other than offences triable by Special Court or Court of Sessions, which are punishable with imprisonment for a term not exceeding three years.
8. Since, the present case pertains to recovery of allopathic medicines from the premises of the petitioner and regarding which the petitioner could not produce any valid licence justifying possession of such allopathic drugs stored at the premises in question, therefore, there is *prima facie* contravention of provisions of Section 18(c) of Drugs and Cosmetics Act, 1940 punishable under Section 27(b)(ii) of the Act. An offence under Section 18A punishable under Section 28 of the Act is also attracted in the present case.
9. In the present case, the State in its reply has admitted that the present case is not a case of recovery of 'adulterated' or 'spurious' drugs so as to attract provisions of Sections 36AB of the Act. However, it has been specifically stated that the present case pertains to contravention of Sections 18(c) and 18A of Chapter 4 of the Act and consequently no Court inferior to that of a Court of Sessions can take cognizance in view of provisions of Section 32(2) of the Act. As per the charge-sheet dated 21.7.2014 (Annexure P-6), the petitioner stands charged for the following offences:
- (i) offence under section 18(c) punishable under section 27(b)(ii) and;
 - (ii) for offence under section 18A punishable under section 28 of the Act.

10. Since the offence under section 18(c) punishable under section 27(b)(ii) of the Act is punishable with imprisonment upto five years, therefore it is not a case to be tried summarily. Thus, it is the Court of Sessions which has jurisdiction to try the offences. The prayer made by the petitioner in his application dated 17.4.2014 for sending the case to CJM was certainly misconceived and was correctly declined by the trial Court.
11. Having held that it is the Court of Sessions which is competent to try the offences in the present case, the question that still survives is as to whether the entire proceedings stand vitiated in the present case on account of the fact that in most of the orders, the trial Court has been referring to itself as Special Court. Infact when the charges were framed, the same were framed by the “Court of Shri Manjinder Singh, Judge, Special Court, Sangrur”. Even the impugned order has been passed by the Presiding Officer by referring to itself as 'Special Court'. After the Magistrate had committed the case to Court of Sessions, it was entrusted to 2nd Additional Sessions Judge in Sangrur, who proceeded with the same by describing himself as Special Court.
12. The usage of designation of Special Judge by the officer was perhaps due to oversight and certainly cannot be appreciated but at the same time such lapse cannot be said to prejudice the accused in any manner inasmuch as there is no defect in procedure adopted in the present case by the Court concerned. Infact the officer manning the Special Court being 2nd Additional Sessions Judge is fully competent in terms of section 32(2) of the Act to try the offences in question. Moreover the procedure to be adopted by Special Court

or by Court of Sessions for trial of offences under the Act is absolutely the same, since in both the eventualities the case is to be tried as a Sessions case, the procedure for which is laid down in Sections 225 to 235 Cr.P.C. As such the accused can not be said to have been prejudiced in any manner so as to hold that the trial stands vitiated.

13. Although the learned counsel for the petitioner has referred to provisions of Section 461(k) Cr.P.C. and has contended that in case of such an irregularity, the entire trial stands vitiated but this Court is unable to accept the said contention. Sections 461(k) Cr.P.C. reads as under:-

“461. Irregularities which vitiate proceedings:-

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-

(a) to (j).....

(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190”.

(l) to (q).....”

14. Section 461(k) Cr.P.C. would apply to those cases where a Magistrate having absolutely no jurisdiction and not being empowered at all proceeds to take cognizance in the matter. The present case is not the case where the Court concerned was not empowered or not having jurisdiction. The Magistrate being the Committal Court was fully competent to commit the case in terms of Section 193 Cr.P.C. The 2nd Additional Sessions Judge to whom the case entrusted by Sessions Judge after commitment was also competent to try the case both by virtue of provisions of Section 32(2) and Section 36-AB of the Act. Thus, in any case, provisions of Section 461(k) are not attracted.

15. It may here also be mentioned that the accused/petitioner had already challenged the order framing charges, wherein the points raised in the present case had also been raised but the said petition was dismissed vide order dated 5.5.2015.
16. As regards the contention that the notification dated 26.5.2011 cannot be made effective retrospectively, I find that the aforesaid contention is rather misconceived inasmuch the notification had merely designated officers of certain rank to be Special Courts whereas the provisions for trial of offences by a Special Court had been incorporated in the Act by way of amendment in the Act on 10.8.2009, which is infact prior to the date of commission of offences in the present case. Thus the provision having already been there in place before the offences were committed on 11.9.2009 it does not lie in the mouth of the petitioner to say that the notification dated 26.5.2011 cannot be made applicable in the present case. By way of notification dated 26.5.2011, the Govt. of Punjab has merely given effect to provisions of Section 36-AB of the Act which were already there in existence. In any case, such procedural change, which does not prejudice the accused can not be called in question.
17. No other point has been raised or urged before this Court. The impugned order dated 9.3.2018 does not suffer from any infirmity and is hereby affirmed. Consequently, all the petitions are dismissed.

19.12.2018

pankaj

(Gurvinder Singh Gill)
JudgeWhether speaking /reasoned
Whether ReportableYes / No
Yes / No