

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

217

**CRR-1803-2008
DATE OF DECISION: 22.05.2018**

PARDEEP KUMAR**... Petitioner**

Versus

STATE OF HARYANA**... Respondent****CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Amaninder Preet, Advocate (Amicus Curiae)
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

This revision petition is directed against the judgment of conviction dated 15.03.2005 and order of sentence dated 22.03.2005 whereby the petitioner has been convicted under Section 27(b)(ii) and Section 28 of the Drugs and Cosmetics Act, 1940 and sentenced to undergo rigorous imprisonment for a period of 01 year and to pay fine of ₹5,000/-, in default thereof, to further undergo rigorous imprisonment for a period of 06 months under Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940 and to undergo rigorous imprisonment for 03 months and to pay fine of ₹500/-, in default thereof, to undergo rigorous imprisonment for a period of 01 week under Section 28 of the Drugs and Cosmetics Act, 1940 as well as the judgment of the lower Appellate Court dated 06.09.2008 whereby his appeal thereagainst has been dismissed.

2. As per the prosecution case, on 23.12.1992 at about 05:00 p.m., when the Drug Inspector along with his staff had

reached near Octroi post outside the Railway Station, Karnal, the accused was apprehended with a bag containing 28 kinds of allopathic drugs. He was asked to produce the purchase bill and the drug licence but he failed to do so. The drugs were seized and 04 types of allopathic drugs were sent for analysis. The nature and quantity of the drugs, which was seized from the petitioner, is described hereunder:-

Sample No.	Particulars of drugs
1. DSD/KNL-117/12-92	4x8x1 M1 Amp. Fortwin Injection batch No.D11892 A Mfg. date August 1992 Expiry July 1996 Mfd. M/s Ranbaxy Laboratories Ltd. Industrial Ltd. Industrial Area 3, Dewas MP.
2. DSD/KNL-118/12-92	25 strips of 10 tablets each Diazepam Tablet IP. 5 Mg Batch No.T-740 Mfg. Dated November 1992 Expiry date October 1995 mfd. M/s Unisul Pvt. Ltd. M-15, Industrial Area Sonapat.
3. DSD/KNL-119/12-92	8x10 M1 Gentamicine Injection IP B.No.G 10892 Mfg. Date October 1992 Expiry date 9/94 Mfd. M/s Health Care Pharmaceutical Santacruz (W) Bombay
4. DSD/KNL/120/12-92	36x8 capsules, Proxyvon batch No.02015 Mfg. Date January 1992 Expiry date May 1995 Mfd. M/s Wockhardt ltd. Valuj Aurangabad.

3. Learned counsel for the petitioner states that he is not challenging the conviction of the petitioner and confining his prayer only to the quantum of sentence awarded to the petitioner. He further contends that the petitioner has undergone an actual sentence of over 1½ months. The incident took place in the year 1992 when the petitioner was 41 years old and at present, the petitioner is 67 years old. He has faced the agony of protracted trial and, therefore, the sentence of the petitioner be reduced to the period already undergone by him. Learned counsel also states that the petitioner has already paid ₹ 5500/- as fine.

4. Learned State counsel has filed the custody certificate which indicates that the petitioner has undergone an actual sentence of 01 month and 16 days out of the total sentence of 01 year and is not involved in any other case.

5. I have heard learned counsel for the parties.

6. There appears to be merit in the submission of the learned counsel for the petitioner. It is the case of the prosecution that the petitioner was carrying and selling allopathic drugs for which he could not produce a valid licence. There is no allegation that the drugs, which were being sold by the petitioner, were spurious in nature. It has, in fact, come on record that after the drugs were sent to chemical examiner, all the samples were found to be of standard quality, which is evident from reports No.1416 dated 26.03.93, 1131 dated 15.03.93, 1309 dated 19.03.93 and 1532 dated 31.3.93 sent by the Government Analyst, Haryana, Chandigarh. The incident took place in the year 1992 and the petitioner has faced the agony of long protracted criminal proceedings for 26 years.

7. The allegations pertain to carrying and selling allopathic medicines without licence. He had produced the purchase bills in his defence, however, the same were not taken into account as these bills had not been submitted by the petitioner at the time of recovery and some other infirmities were also there. It is provided in Section 27(b) of the Drugs and Cosmetics Act, 1940 that a

person who is found to be in possession of allopathic drugs without a valid licence, as required under Clause (c) of Section 18 of the Drugs and Cosmetics Act, 1940, shall be punished with imprisonment for a term which shall not be less than 03 years but which may extend to 05 years and with a fine which shall also be not less than ₹1 lakh or three times the value of the drugs confiscated, whichever is more. This amendment has been carried out in the year 2008 and would not be applicable to the case of the petitioner. Prior to this amendment, the offence under Section 27(b) was punishable for a term which shall not be less than 01 year but which may extend to 03 years and with a fine which shall not be less than ₹ 5000/-. There is a proviso which empowers the Court for any adequate and special reasons to be recorded in the judgment for imposing a sentence for a term of less than one year, fine of less than ₹ 5000/-. This had also been, in consonance with the increase of punishment as aforementioned, amended in the year 2009 and instead, it has been stipulated that a sentence of less than one year and a fine of rupees less than ₹5000/- could be imposed by the Court for adequate and special reasons to be recorded. Prior to the amendment, Section 28 of the Drugs and Cosmetics Act, 1940 stipulated imposition of punishment prescribed for which the petitioner has also been punished, was only a fine which could extend to ₹ 1000 rupees.

8. In view of the aforementioned reasons including the petitioner having faced long protracted proceedings, case against him being only of not having a licence, the medicines not been

found to be substandard and he is not involved in any other case, it would meet the ends of justice, if the sentence of the petitioner is reduced to the period already undergone by him.

9. Accordingly, while maintaining the conviction of the petitioner, the instant revision petition is disposed of with the directions that the sentence of the petitioner is reduced to the period which is already undergone.

22.05.2018

SwarnjitS

(ANUPINDER SINGH GREWAL)
JUDGE

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