

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

CRR-2238-2009 (O&M)

Date of Decision: 18.05.2018

Dr. Raj Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Gaurav Mohunta, Advocate
for the petitioner.

Mr. R.K. Doon, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

This revision petition is directed against the judgment dated 10.08.2009 passed by Sessions Judge, Hisar vide which the appeal of the petitioner was dismissed while modifying the sentence from one year to nine months against the judgment/order of conviction dated 19/20.7.2007 passed by Chief Judicial Magistrate, Hisar. Petitioner was convicted under Section 27 (b) (ii) and 28 of Drugs and Cosmetics Act and Rules 1945 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-. In default of payment of fine, he has to further undergo simple imprisonment for two months. Further he was sentenced to RI for a period of six months and to pay a fine of Rs.500/- for the commission of offence under Section 28 of the Act.

2. Brief facts of the case noted by the courts below is as under:

“Briefly, facts of the complaint are that on 9.12.1997 Drug Inspector Sh. Arvind Kumar along with Senior Drug Inspector, Hisar Zone, Hisar Sh. L.C. Mittal, Dr. Mohinder Pal Ayurvedic Medical Officer, GAD village Shahpur, with his peon visited the sale premises of Dr. Raj Kumar (Accused) situated in village Shahpur, District Hisar, to investigate the complaint received through Senior Drugs Inspector Hisar. At the time of inspection accused were present in the shop. Sh. Arvind Kumar disclosed his identity and purpose of the visit. Shop of the accused was inspected and the accused was found in conscious

possession of several allopathic drugs which were stocked for sale and distribution by the accused in the shop. On enquiry he could not produce the Drugs Sale License. District Drug Inspector asked him to disclose the name address and other particulars of person from whom he acquired the drugs found stocked for sale but the accused could not disclose. All the drugs were seized by the drug inspector in accordance with Drug Act. Form 16 was prepared at the spot. Accused put his signature on it. Form 17 was also prepared on the spot which was also endorsed and signed by the accused. On the same day accused was served notice under Section 18(C) and 18(A) which was received by the accused. After seizure of the Drugs, Custody order was obtained from the Court. Once sealed portion of sample was sent to Govt. Analyst, Haryana, Chandigarh. The test report was received by the Drug Inspector. A copy of the test report was sent through registered post and after obtaining permission to launch the prosecution, the present complaint was filed against the accused as the accused has contravened the section 18(C) of the Act by stocking for sale of allopathic Drugs, without possessing a valid Drugs Sales Licence issued under the act and has also contravened section 18 (A) by not disclosing the name, address and other particulars of the person from whom the Drugs have been acquired. Hence, this complaint.”

3. Learned counsel for the petitioner submitted that complainants namely Satayvir Singh, Mahavir Singh and Dr. Gulab Singh who was owner of the shop and licence holder were not examined. Thus, there is infirmity in the trial proceedings. It was further contended that son of Dr. Gulab Singh has stated that petitioner was servant in his father's shop. Therefore, Dr. Gulab Singh should have been examined since there was a relationship between employer and employee between Dr. Gulab Singh and the accused. Both the courts below have not appreciated this issue. Learned counsel for the petitioner further submitted that allegations relates back to 1997, therefore, petitioner is entitled to leniency. In support this contention, learned counsel for the petitioner has relied on two decisions passed by the

Supreme Court as well as this Court in the cases of *Ravinder Kumar v. State of Haryana*; 2015 (1) Drugs Cases (DC) 113 and *Pawan Kumar Jain and another v. State of Haryana*; 2014 (2) Drugs Cases (DC) 118. In those cases, length of litigation has been taken into consideration while reducing the sentence to the period already undergone.

4. On the other hand, learned counsel for the respondent-State submitted that having regard to the conduct of the petitioner/accused to the extent as and when raid was conducted by the staff of the Drug Controller Department, accused-Raj Kumar did not disclose to the extent that he is working under Dr. Gulab Singh. He has also not disclosed how did he possess 21 allopathic drugs for the purpose of sale and further he has not produced any valid drug licence which was required under the relevant statutory Act. It was further contended that question of examination of Dr. Gulab Singh may not arise for the reasons that accused-Raj Kumar did not disclose the name of Dr. Gulab Singh to the extent that accused was working under him. Examination of complainant is also not necessary for the reasons that based on the complaint that department of Drug Controller proceeded to raid the shop and recovered 21 allopathic drugs. Such possession of drugs is without any valid document including Drug Sale Licence. Even accused failed to render any information despite giving him notice under Section 18-A of the Act as is evident from Ex.PD. In view of these facts and circumstances, no interference is called for in respect of decisions passed by both the courts below.

5. Heard the learned counsel for the parties.

6. Petitioner's contention that he was only working as a servant with Dr. Gulab Singh and he is not aware whether 21 allopathic drugs were seized by the Drug Controller Department is with valid Drug Sale Licence etc. In this regard, he should have in all fairness disclosed the name of Dr. Gulab Singh or his employer. He has also not disclosed that owner of the Shop is Dr. Gulab Singh. In other words, he has mislead the Drug Controller Department as and when raid was conducted. That apart he has hidden certain information like owner of the shop namely Dr. Gulab Singh who was licence holder in respect of Ayurvedic and Unani related licence and not allopathic despite giving notice to him (Ex.PD). Question of examination of the complainant and Dr. Gulab Singh would have arisen if there is any

contradictory statement in respect of seizure of 21 allopathic drugs from the possession of the accused or his shop at the relevant date on which raid was conducted. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the judgments passed by the courts below on merit. However, in view of the decisions cited by the learned counsel for the petitioner and having regard to the fact that the alleged incident relates back to the year 1997 and we are in the year 2018, at this stage, it is not appropriate to give effect to the order dated 10.08.2009 passed by the Sessions Judge in toto insofar as asking the petitioner to undergo remaining rigorous imprisonment.

7. Accordingly, revision petition is allowed in part while upholding the conviction of the petitioner but sentence of the petitioner is reduced to the period already undergone by him during the period from 10.08.2009 to 27.10.2010. Petitioner is also liable to pay cost of Rs.25,000/- to the Department of Drug, Haryana.

18.05.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**