

**RA-CW-294-2018 in
CWP-15544-2018**

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

**RA-CW-294-2018 in
CWP-15544-2018
Date of decision-20.09.2018**

Dr. Jimmy Jindal

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Tanu Bedi, Advocate for the applicant-petitioner.

JITENDRA CHAUHAN, J. (Oral)

The instant application is for review of the judgment dated 10.07.2018 on the grounds that there is error apparent on the face of the record and as such the review application is maintainable.

Learned counsel for the applicant-petitioner contends that the contentions raised by her in the writ petition have been wrongly recorded by this Court. The Court observed that the counsel for the petitioner had raised the argument that the drug containing chemical substance 'Buprenorphine' is not falling under Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') but under Drugs and Cosmetics Act, 1940 (for short, 'the Act'), whereas her argument was that the controversy in the present matter revolves around one solitary question whether the sale or availability of Buprenorphine outside the Drug Addiction Centre established by the Government of India is an offence under NDPS Act or not. She further contends that Buprenorphine along with many other medicines as mentioned

under Schedule H-1 of the Act is governed by provisions, Rules and Regulations under the Act. She cites Rule 65-A of NDPS Act to contend that if the conditions of the Act are violated then the offence becomes the one under NDPS Act also. She further contends that there are major omissions in the judgment under review which go to the very root of the principles of jurisprudence. The impugned judgment is completely silent about the orders passed in the case of co-accused in the same FIR in CWP-15801-2018. The absence of discussion of the case of the co-accused also constitutes an error apparent on the face of record and as such it falls within the definition of 'sufficient reasons' as categorically mentioned in Order 47 Rule 1 CPC.

Heard.

Hon'ble the Supreme Court in “**Kamlesh Verma Vs. Mayawati and others**”, 2013 (4) SCC (CrI) 265, has summed up the law with regard to review of the judgment when the Review will be maintainable:-

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.
- (iv) The words “any other reason” mean “a reason sufficient on grounds at least analogous to those specified in the rule”.

When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

In the instant case, the arguments raised by learned counsel for the applicant-petitioner touch the merits of the case and attract re-appreciation of the issues involved in the petition, which cannot be gone into in the review application. It is wholly within the domain of the appellate Court to test the legality of the judgment under review. In the guise of review application, the matter can not be re-opened and corrected to the satisfaction of the applicant-petitioner.

In view of the above, no case for review of the judgment dated 10.07.2018 is made out at this stage.

Application stands dismissed.

20.09.2018

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**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned :

Yes No

Whether Reportable :

Yes No