

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

**Crl. Appeal No. S-3257-SB of 2016 (O&M)
Date of Decision: September 16, 2019.**

Lakhwinder Singh @ Lakhi

.....APPELLANT

VERSUS

State of Punjab

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Sushma Chopra, Advocate
for the appellant.

Mr. Avtar Singh Sandhu, Addl. A.G., Punjab.

SURINDER GUPTA, J.(Oral)

As per case of the prosecution, the appellant was apprehended on 18.01.2013 by the police of Police Station Sadar, Rajpura and on his search 10 gram of Smack and 1440 Capsules in 180 strips of 8 capsules each of SPASMOPROXYVON were recovered. From the smack, two samples of one gram each were separated and sealed while from the strips of capsules of SPASMOPROXYVON two strips were separately taken as sample and sealed with the seal of SI Harpreet Singh bearing letter 'HS'.

As learned counsel for the appellant has confined her submissions only on the question of quantity of contraband recovered from appellant, without challenging his conviction, detailed facts of the case are not required to be discussed.

Learned counsel for the appellant submits that in the report of

'Dextropropoxyphene Napsylate'. The total number of strips recovered were 180. There is no evidence that all the strips were of the same batch number or brand. In these circumstances, it cannot be concluded that all the strips recovered from the appellant were containing the same contraband.

Learned State counsel has fairly conceded that batch number of the strips and capsules nowhere finds mention in the recovery memo or in the statements of witnesses. The sample of smack sent to FSL was declared to be that of 'smack' vide report EX. PW2/H. It was 10 grams of smack which falls in non-commercial quantity. The average weight of one strip of SPASMOPROXYVON was 662 mg, which is also non-commercial quantity. In the absence of any evidence that all the strips recovered from the appellant were of the same brand and same batch number, the recovery of contraband from the appellant cannot be taken as commercial on the basis of FSL report (Ex. PW2/I). Learned counsel for the appellant pleads for lenient view with regard to quantum of sentence awarded to appellant as recovery effected from him was of non-commercial quantity of contraband.

As per the case of prosecution, the police has recovered 180 strips having inscription SPASMOPROXYVON. There is no evidence that these strips pertain to a particular manufacturing company or were having any batch number, date of manufacturer etc.

The question which arise for consideration is as to whether one strip sent to FSL can be taken as a representative sample of all the strips. On giving a serious thought on this point, I am of the opinion that one strip cannot be taken as a representative sample. The investigating officer could select more than one strip randomly out of 180 strips to make out a case that

some loose tablets are recovered, one of the tablet from the loose tablets may not be a representative sample of all the loose tablets. However, if the investigating officer takes the sample of 5 or 10 tablets randomly that may be a representative sample.

Keeping in view the above fact, I am of the considered opinion that the report of FSL declaring the contents of one strip as *Dextropropoxyphene Napsylate* cannot be a reason to conclude that all the strips were containing the capsules having similar contraband. The weight of capsules in one strip which were found to be SPASMOPROXYVON were 662 mg. Besides this, 10 gram of smack was recovered from the appellant. The quantity of both the contraband falls in non-commercial quantity. As such, conclusion of the learned trial Court that the quantity of *Dextropropoxyphene Napsylate* contraband recovered from the appellant was of commercial quantity is not based on facts and is not legally tenable. The findings of the learned trial Court convicting the appellant for offences punishable under Section 18B and 22 of Narcotic Drugs & Psychotropic Substances Act are modified to the extent that quantity of contraband recovered from the appellant does not fall in commercial quantity.

As a sequel of above my discussions, the appeal is partly accepted. The conviction of appellant as recorded by learned trial Court is maintained with modification that recovery of contraband (*Dextropropoxyphene Napsylate*) was of non-commercial quantity. As per custody certificate, appellant has undergone 03 years 01 month and 19 days of imprisonment so far. As such, I am of the considered opinion that the sentence already undergone by the appellant meets the ends of justice. The

sentence awarded to the appellant under Section 22 of NDPS Act is reduced

from ten years imprisonment to period of sentence already undergone by him and amount of fine is reduced from ₹1 lakhs to ₹5,000/-. In default of payment of fine he will further undergo rigorous imprisonment for one month. The sentence awarded to the appellant for the offence under Section 21 of NDPS Act is also modified as follows.

- (i) Rigorous imprisonment for six months and to pay a fine of ₹5,000/-. In default of payment of fine he will further undergo rigorous imprisonment for one month.

Copy of this order be conveyed to Chief Judicial Magistrate, Patiala and concerned Jail Superintendent for information and necessary action.

(SURINDER GUPTA)
JUDGE

September 16, 2019
Jyoti-II

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***