

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

**CRM-M-9857-2019 (O&M)
Date of Decision: 05.03.2019**

Sanjay Gupta

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Navmohit Singh, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This petition has been filed under Section 482 Code of Criminal Procedure for setting aside the order dated 13.12.2018 of the learned Additional Sessions Judge, Kaithal, whereby his application to transfer the case of the petitioner for trial to the Court of JMIC/CJM, Kaithal has been dismissed.

On 10.4.2013, the premises of M/s Sanjay Gupta Nursing Home, Kaithal was inspected in the presence of the accused. During search various allopathic drugs were found stocked and exhibited for sale without there being any registration as RMP and a valid drug licence. Samples of three drugs were taken for analysis.

Complaint was filed by the Drug Control Officer against the petitioner under Sections 18(c), 22(1) (cca) and 18-A of the Drugs and Cosmetics Act, 1940 punishable under Sections 27(b)(ii), 27(d) and 28 of the Act. The case was committed to the Court of Session for trial.

The petitioner submitted an application that he could not be prosecuted by the Court of Session/ Special Court and that he is liable to be tried by the CJM/JMIC. It was contended that the samples of the drug taken from the premises of the petitioner were not found to be spurious and adulterated. Hence, the Court of Session/ Special Court had no jurisdiction to try the case as its jurisdiction was only in relation to offences relating to adulterated and spurious drugs. This application has been dismissed by the impugned order.

The learned Court while dismissing the application observed as under:-

“7. The Hon’ble Madhya Pradesh High Court accordingly held that the Special Court can take the cognizance of the offences after the case being committed to it by the Magistrate. Similar view was expressed by Hon’ble Jammu and Kashmir High Court in ‘Banu Enterprises Vs. State of J.K.’, 2016(4) JKJ 29. Our own Hon’ble Punjab and Haryana High Court in ‘Rajan Bhardwaj vs. State of Haryana’, 2018(2) RCR(Criminal) 548 has observed that after amendment only Court of Sessions/Special Court is competent to take cognizance for offences under the Act. Moreover, a joint and cogent reading of Sections 32, 36A and 36AB goes to show that under Section 36(A) the power had been vested in the Judicial Magistrate of First Class specially empowered in this behalf by the State Government or in a Metropolitan Magistrate to try offences in a summary way, punishable with imprisonment for a term not exceeding three years. Meaning thereby that the Magistrate cannot try the offences which are punishable with imprisonment for three years or more. These offences are to be tried by the Court of Sessions/Special Court after the case being committed to it. Section 32 of the Act had a wide implication which had been substituted w.e.f. 10.8.2009 which specifically mentions that save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try to an offence punishable under this Chapter. Section 36AB

again specifies certain offences which are to be triable by the Special Court constituted under the Act.

8. From these provisions, it becomes very clear that the offences punishable with imprisonment of less than 3 years are to be tried by the Judicial Magistrate Ist Class and he may if it thinks proper to do so, can do it in a summarily way. Offences falling under adulterated and spurious drugs i.e. punishable under clauses (a) and (b) of section 13, subsection (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 are to be tried by the Special Court. For offences triable by the Special Court and all other offences except those triable by the Magistrate, the power vest with the Court of Sessions.

9. Here the accused has committed an offence under sections 18(c), 22(1) (cca) and 18-A of Drugs and Cosmetics (Amendment) Act 2008 punishable under 27(b) (ii), 27(d) and 28 of the said Act which is punishable with imprisonment upto 5 years, therefore, these offences fall within the definition of offences under section 32 which are to be tried by the Court of Sessions. The present case has been committed for trial for the aforesaid offences by commitment order dated 4.6.2015. Therefore, no ground is made out to send the case back to the Court of learned CJM/JMIC for trial and accordingly, the application stands dismissed.”

There is no infirmity in the aforesaid order which is as per the statutory provisions.

Dismissed.

March 05, 2019

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No