

**110 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-49750-2019

DECIDED ON: 13th DECEMBER, 2022

GURMUKH KAPOOR

PETITIONER

VERSUS

STATE THROUGH DRUGS INSPECTOR, FEROZEPUR

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The instant petition under Section 482 Cr.P.C. has been preferred for quashing of complaint No. CIS COMA-2/2018, dated 18.05.2017, under Section 18(c) read with Rule 62, punishable under Section 27 (b) (ii) and Section 18-A punishable under Section 28 of the Drugs and Cosmetics Act, 1940/Rules 1945 (Annexure P-1) filed by the State through Drug Inspector, Ferozepur before learned Chief Judicial Magistrate, Ferozepur who further wrongly committed the case to the learned Judge, Special Court, Ferozepur, vide order dated 05.04.2018 (Annexure P-2) and further learned Judge, Special Court, Ferozepur has wrongly framed the charge vide order dated 17.09.2019 (Annexure P-3).

Learned counsel for the petitioner has urged that the petitioner is running the chemist shop under the name and style of M/s J.S. Pharmaceuticals, Krishna Nagri, Near Khanna Hospital, Ferozepur City and it was during checking, unlicensed godown/premises near shop was

found stocking many types of Allopathic Drugs.

It is contended that the case of the prosecution is that 10 types of Allopathic Drugs, as mentioned in Form No.16 of Drug Inspectors and others, were seized. The allegation against the petitioner is that he has violated the provisions of Section 18 (c) or Rule 2 (ee) read with Rule 62 and thereby, has committed an offence punishable under Section 27 (b) (ii) and Section 18-A punishable under Section 28 of Drugs and Cosmetics Act, 1940 (for short 'Act').

It is further contended that a perusal of the complaint attached with the present petition as Annexure P-1 reveals that according to the record, the petitioner has been granted whole-sale drug licence, as mentioned in para 5 of the said complaint. In unlicensed godown premises, no sale or purchase record is found to be found kept and shown as required under Section 18-A of the Act and on further inquiry it has been revealed that godown premises, in question, is owned by one Mr. Rakesh Kumar son of Balwant Rai, who disclosed that shop is rented to the accused-petitioner, who had allegedly slipped away at the time of inspection. On 09.11.2015, after taking necessary orders as required under Section 23(5) (b) of the Act from learned Chief Judicial Magistrate, the drugs were taken into custody and seized.

Thereafter according to the prosecution case, a registered notice dated 03.03.2016 was sent to the accused-petitioner to disclose the source of acquisition of drugs and to show any valid drug sale licence but he failed to do so. In response to the afore-said notice, neither any reply nor any un-delivered report was received from the office of the petitioner.

A complete investigation report was sent to the Joint Commissioner

(Drugs), Food and Drugs Administration, Punjab, demanding prosecution orders against the petitioner-accused.

Learned counsel for the petitioner has contended that under Section 36 AB of the Act, the court as notified by the State can only take cognizance of the offence and no such notification designated any Court as Special Court to try the offences adulterated drugs or spurious drugs has been issued by the State and therefore, the complaint is liable to be quashed.

Another contention of learned counsel for the petitioner is that the drugs as alleged to had been seized, have neither been alleged to be adulterated or spurious but the complaint has been lodged only on the allegation that the petitioner was not having any valid licence to stock such drugs.

It is on the afore-said facts the present complaint has been lodged categorically alleging contravention of Section 18 (c) read with Rule 62 of the Act and Rules 1945 by stocking allopathic drugs for sale and distribution at a premises other than his licensed firm for which he was not having any valid license. Further the petitioner has not produced the purchase records of such drugs, which were seized from his unlicensed godown premises.

Notice of motion.

On the asking of Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of respondent-State, who with the assistance of Mr. Ashutosh Garg, Drug Inspector, has argued that under Section 32 of the Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter. He further contends that no prosecution

under this Chapter shall be instituted except by sub-section 2 as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter. He submits that it is the Court of learned Additional Sessions Judge who has taken the cognizance and to whom the complaint was forwarded by learned Chief Judicial Magistrate.

Provisions of Section 32 need to be incorporated hereinbelow:-

“32. Cognizance of offences—1 (1) No prosecution under this Chapter shall be instituted except by—

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter”

Further Section 36 AB, which was inserted by way of an amendment by Act 26 of 2008, sec. 20 (w.e.f. 10.08.2009) envisaged as under:-

36AB. Special Courts. — *(1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (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 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.”

Learned State counsel has produced a copy of notification dated 22.09.2010 designating the Court of Additional Sessions Judge in each Session Division, in the State of Punjab as Special Court for trial of offences punishable under clauses (a) and (c) of Section 27, Section 28, Section 28A, Section 28B and clause (b) of sub-section (1) of Section 30 and other offences relating to adulterated drugs or spurious drugs under the Act in the respective Session Division.

In the light of the afore-said proposition and the provisions as referred by learned State counsel, the argument that no court is designated as Special Court by any notification, is of no help and lacks merit.

As far as another contention of learned counsel for the petitioner is concerned to the effect that under Section 36AB of the Act, the offences mentioned as triable by the Special Court relates only for the cases where adulterated or spurious drugs are found. To examine the case as to whether the drugs seized in the present case would fall within the definition of 'adulterated drugs or spurious drugs', Sections 9(A) and 9(B) of the Act need to be referred, which read as follow:-

“9A. Adulterated drugs.—*For the purposes of this Chapter, a drug shall be deemed to be adulterated,—*

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary

conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

9B. Spurious drugs.—*For the purposes of this Chapter, a drug shall be deemed to be spurious—*

(a) if it is imported under a name which belongs to another drug; or

(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or

(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or

(d) if it has been substituted wholly or in part by another drug or substance; or

(e) if it purports to be the product of a manufacturer of whom it is not truly a product .”

Chapter III and Chapter IV of the Act would be relevant wherein standards of quality have been mentioned before defining adulterated drugs under Section 17(A) and 17(B) as per the Act.

The circumstances to be looked into at this stage would be that the drugs seized are, admittedly, as per the submission of learned counsel

for the petitioner were found but the same are lying in an unlicensed premises that too without possessing valid licence to keep such drugs. It could be read as per Section 17(A) (b) and Section 17(B) wherein, it would not meet the parameters as stipulated in clause 'a and b' as well as clause 'c', apart from clause 'e' as also raising a doubt with regard to the packing with manufactured name will, become highly doubtful, which makes the drugs to be considered as spurious drugs.

Learned counsel for the petitioner has also relied upon the judgment of the High Court of Kerala at Ernakulam in the case of “**Zest Pharma and others vs. Drug Inspector and another**” in CrI. Rev. Pet. No. 1475 of 2013, decided on 24.04.2013 wherein, order of Magistrate was challenged in revision petition and not under Section 482 Cr.P.C. Both the proceedings have different parameters of consideration.

However, it is evident that the Court in that case has not considered the definition of adulterated and spurious drugs as defined in Section 9A and 9B apart from Chapter IV of the Act in Section 17A and Section 17B and therefore cannot be relied in the instance case as it would not apply to the facts and circumstances of the present case.

In view of the discussions made hereinabove and the legal proposition, this Court does not find any merit in the present petition and dismiss the same, being devoid of any merit.

(SANDEEP MOUDGIL)
JUDGE

13th DECEMBER, 2022

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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |