

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

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**CRA-S-2123-SB-2016
Date of decision: 13.01.2023**

Dr. Balwan

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Kumar Goyat, Advocate
for the appellant.

Mr. Karan Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

The appellant is impugning the order dated 04.02.2016 passed by the learned Additional Sessions Judge, Hisar vide which after being held guilty of offence punishable under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 (for short, 'the Act') was convicted and ordered to be released on probation of good conduct.

Learned counsel for the appellant while impugning the judgment and order of sentence, has vehemently argued that the Trial Court had gravely erred in failing to appreciate that the appellant had been awarded a degree of Ayurved Ratna by Hindi Sahitya Sammelan, Allahabad vide certificate Ex.D7 and subsequently he was registered as a Vaid with effect from 03.01.1993 by the State Council of Ayurvedic and Unani Medicines, Bihar vide certificate Ex.D8. He further submits that at the time of the alleged raid which was carried out by the Drugs Control Officer, Hisar-II and the Medical Officer, PHC, Thurana, no

patient was present and no record much less of any person having purchased any drugs from the appellant had surfaced. Learned counsel has submitted that in the circumstances, the impugned judgment and order deserved to be set aside and the petitioner acquitted of the charges framed against him. In support of his submissions, he has placed reliance upon ***Phul Singh Vs. State of Haryana : (1986) 1 RCR (Criminal) 532.***

Learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that the appellant was not eligible to practice the modern system of medicine much less distribute or prescribe allopathic drugs to his patients as he was not registered under the provisions of Section 2(ee) of the Act. Learned State counsel still further submitted that the appellant in form 16 had himself admitted to having stocked and prescribed allopathic medicines without any licence to sell them. It has vehemently been prayed that in the circumstances, the findings recorded by the Trial Court on the basis of evidence led could not be said to be perverse so as to warrant interference of this Court. Learned State counsel has place reliance upon ***Sarwan Singh Dadri Vs. State of Punjab and others : 1987 AIR (Punjab) 81*** and ***State of Punjab Vs. Lashkar Singh : 1992(1) RCR (Criminal) 185.***

I have heard learned counsel for the parties and perused the relevant material on record.

As per the complaint filed by the Drugs Control Officer, Hisar-II on 03.10.2009 a raid was conducted on the clinic/shop of the appellant situated at VPO Thurana, District Hisar on the basis of a

secret information. Dr. Rajesh Bhoria, Medical Officer, PHC, Thurana was also part of the raiding party. During search, the appellant was found to have stocked 20 types of different allopathic drugs for sale and distribution. The appellant also failed to produce any valid drug licence authorizing him to stock those allopathic drugs for sale and distribution. The raid was carried in the presence of a public witness Ram Niwas. Thereafter, the statement of the appellant was recorded and he signed qua the seizure of drugs on Form 16. After following the other requisite formalities a notice was issued by the complainant to the appellant on 03.10.2009, which was never replied to by the appellant. A perusal of the evidence on record reveals that the appellant was holder of a degree of Ayurved Ratna awarded by Hindi Sahitya Sammelan, Allahabad (Ex.D7) only, however, admittedly and not disputed by the appellant himself, he was not registered to practice modern system of medicines for the purpose of the Act.

Hon'ble Supreme Court, in ***Rajasthan Pradesh V.S. Sardarshahar and another Vs. Union of India and others : AIR 2010 SC 2221***, has categorically held that anyone who has acquired certificate/degree or diploma from Hindia Sahitya Sammelan Prayag after 1967, would not be eligible to practice any field of medicine. Therefore, the Trial Court has rightly held on the basis of the evidence led that the appellant was not authorised to stock the medicines which were recovered from his shop at the time of raid in question. The case law relied upon by the learned counsel for the appellant would be of no avail to the appellant as the same is distinguishable on the facts and circumstances of the case in question. In the light of the

aforementioned, no interference is warranted in the impugned order dated 04.02.2016.

Dismissed.

13.01.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No