

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

SR. No.226

CRR-958-2019 (O&M)
Date of decision:04.07.2023

Union Territory, Chandigarh

...Petitioner

Versus

Parampal

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sudha Singh, Addl. P.P., UT Chandigarh
assisted by Mr K.R. Yuvraj Singh Rathore, Advocate,
for the petitioner.

Mr. Sandeep K. Sharma, Advocate,
for the respondent.

N.S. SHEKHAWAT, J.

1. By filing the present petition, the Union Territory, Chandigarh, has laid challenge to the order dated 17.11.2018 passed by the learned Judge, Special Court, Chandigarh, whereby the learned Special Court held that the offence was triable by the Court of learned Judicial Magistrate 1st Class and the file was sent to the Court of learned Area Magistrate to hold the trial of criminal case under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. As per the case of the prosecution, as projected in the report under Section 173 Cr.P.C., at about 06.10 PM on 05.05.2018, Parampal (respondent/accused) was found in conscious possession of 83 injections of

Buprenorphine 2 ml each and Pheniramine Maleate 10 ml each. As per the

provisions of the NPDS Act, Buprenorphine is a psychotropic substance and its possession amounts to the contravention of the provisions of the NDPS Act, which is punishable under Section 22 of the NDPS Act. In the present case, the prosecution had alleged that by keeping the possession of 83 injections of Buprenorphine 2 ml each, the psychotropic substance fell in the category of “commercial quantity”.

3. After the presentation of the final report, the matter was considered by the learned Special Court, Chandigarh. As per the learned Court, the actual quantity of Buprenorphine had to be taken into counting so as to determine the quantity of psychotropic substance possessed by the accused on 05.05.2018. The learned court further held that the parcel containing the injections was opened after breaking the seals and the injections kept therein were examined. On the paper labels pasted on each injection, the quantity of Buprenorphine contained therein was mentioned as equivalent to 300 mcg per ml. Thus, each injection contained 600 mcg of Buprenorphine. As a consequence, 83 injections contained 49800 mcg Buprenorphine. One gram is equal to 1000000 mcg. Thus, the total quantity of Buprenorphine, recovered from the respondent/accused, was held to be .0498 grams, i.e. less than 01 gram. Thus, the learned Special Court held that the total psychotropic substance recovered from the accused on 05.05.2018 was less than 01 gram and therefore, fell within the definition of a “small quantity”. Keeping in view the provisions of Section 36-A (1)(a) of the NDPS Act, the offence shall be punishable for a term less than 03 years and it was ordered to be sent back to the court of learned Judicial Magistrate for trial. While passing the impugned order, the learned Special Court also

placed reliance on the judgment passed by this Court in the matter of ***Rajvir Singh @ Raju Vs State of Punjab, 2018 (4) RCR (Criminal) 375.***

4. Learned counsel for the petitioner-UT Chandigarh vehemently argued that the learned Special Court has wrongly calculated the total quantity of the recovered psychotropic substance, i.e. Buprenorphine in the present case. It was further contended that while calculating the total quantity of the contraband even the neutral substance has to be taken into consideration to decide the quantity of the contraband. She further contended that learned trial Court had taken a wrong view that only actual quantity of the narcotic substance in the mixture was required to be taken into consideration. Learned State counsel further submitted that the law laid down by this Court in the matter of ***Rajvir Singh*** (supra) no more lays down a good law and has been set aside by the Hon'ble Supreme Court in the judgments rendered in ***Hira Singh and another Vs Union of India and another, 2020(2) RCR (Crl.) 523 and Criminal Appeal No.1726 of 2019 titled as 'Intelligence Officer, Thiruvananthapuram Vs Naushad K.K. and others'***, decided on 17.11.2022. Thus, in the present case, 83 injections of 2 ml each of Buprenorphine have been recovered and the total quantity of the psychotropic substance possessed by the present respondent-accused would be 166 ml (83x2), which is a commercial quantity.

5. The above-said submissions made by the learned counsel for the State are vehemently opposed by the learned counsel appearing on behalf of the respondent.

6. With the assistance of the learned counsel for the parties, I have also perused the record carefully.

7. Before proceeding further, it is apt to refer to the provisions of Sections 22 and 36-A (1) (a) of the NDPS Act, which are as under:-

“22. Punishment for contravention in relation to psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 34[one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

36-A. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where

there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.....;"

8. Still further, it has been held by the Hon'ble Supreme Court in the matter of ***Hira Singh (supra)*** as follows:-

"10. In view of the above and for the reasons stated above, Reference is answered as under:

(I). The decision of this Court in the case of E. Micheal Raj (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV). Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it

is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.”

9. Furthermore, Hon’ble the Supreme Court in the case of **‘Naushad K.K.** (supra), reiterated the findings recorded by the Hon’ble Supreme Court in the matter of **Hira Singh** (supra).

10. Now advertent to the facts of the present case, it is apparent that on 05.05.2018, the respondent/accused was found in possession of 83 injections of Buprenorphine 2 ml each. Consequently, the total quantity of the psychotropic substance would be held 166 ml. As per the Schedule appended with the NDPS Act, the quantity of above 20 ml shall be considered to be “commercial quantity” for the purposes of the present case. Since the quantity of psychotropic substance would be commercial in nature, the respondent would be liable to be punished as per the provisions of Section 22 (c) of the Act. It clearly provides that any person, who is possessing commercial quantity of the psychotropic substance, shall be punishable with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to 20 years and shall also be liable to pay the fine. As per Section 36-A(1)(a) of the NDPS Act, all offences under the NDPS Act, which are punished with an imprisonment for a term more than 3 years, shall be triable only by the Special Court constituted for the area in which the offence has been committed. Thus, it is apparent that the findings recorded by the learned Special Court in the impugned order are wrong and unsustainable. The learned special Court overlooked the law laid

present case are squarely covered by the ratio of the law laid down by the Hon'ble Supreme Court in the matter of *Naushad K.K.* (supra) and **Hira Singh** (supra). Accordingly, the present appeal deserves to be allowed.

11. As a consequence of the above findings, the present revision petition is allowed. Consequently, the impugned order dated 17.11.2018 passed by the learned Special Court is set aside and case file relating to the trial of the present case shall be placed before the learned Judge, Special Court under the provisions of the NDPS Act, Chandigarh for holding the trial.

(N.S. SHEKHAWAT)
JUDGE

04.07.2023
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO