

2023:PHHC:066581

In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-28547-2016 (O&M)
Date of Decision:-9.5.2023

Dr. Sudha Vasudev ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Randeep Singh Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab and
Ms. Swati Batra, DAG, Punjab,
assisted by ASI Ranjit Singh.

FIR No.	Dated	Police Station	Section/s
267	19.12.2014	Dakha, Ludhiana (Rural)	22, 61 and 85 of NDPS Act and Sections 12 and 13(2) of Prevention of Corruption Act, 1988

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seek quashing of abovementioned FIR and all consequential proceedings emanating therefrom.
2. The allegations, in nutshell, are that on 19.12.2014, when Sub Inspector Harjinder Singh alongwith other police officials was present at Main Chowk,

Mullanpur, then Rupwinder Singh met them and disclosed that he was a drug addict and that he had visited Civil Hospital, Ludhiana for the purpose of de-addiction, where he met Dr. Sudha Vasudev (petitioner), who told him to visit her private clinic situated in Saggu Market, Mullanpur. The said Rupwinder Singh stated that on account of the aforesaid representation made by Dr. Sudha Vasudev, he started taking medicines from her, who used to charge a little more than the cost of medicines. It is specifically alleged that the said doctor was indulging into sale of intoxicant medicines, which she used to procure from Civil Hospital, Ludhiana, which were otherwise prohibited medicines.

3. Pursuant to receipt of said information, a trap was laid and the complainant was asked to purchase the aforesaid drugs from the accused. Pursuant to the said trap/raid, Dr. Sudha Vasudev (petitioner) was caught red-handed while selling prohibited medicines to the complainant and the tainted currency notes i.e. an amount of Rs.2,550/-, which had been passed on by the complainant to the petitioner were recovered from the petitioner. Upon acceptance of the aforesaid amount, the petitioner is alleged to have issued a prescription slip on which the name of Dr. Amardeep Singh Kohli was prescribed. It is further the case of prosecution that upon search of the premises, 22 different types of prohibited medicines/drugs were recovered, which were taken into possession. The description in quantity of the said medicines is as under:

- “1. Clonax-0.5 (1430 tablets)
2. Bupax-0.4 (1460 tablets)
3. B-Nox-1 (1870 tablets)

4. Zolnite-10 (800 tablets)
5. B-Nox-04 (1920 tablets)
6. Sezam-10 (2200 tablets)
7. B-Nox (1400 tablets)
8. AldixX-0.5 (2400 tablets)
9. B-Nox-0.2 (800 tablets)
10. Bupax-1 (850 tablets)
11. Lorax-2 (200 tablets)
12. Nicare-10 (320 tablets)
13. Copax-0.5 (400 tablets)
14. Clonax-Plus (300 tablets)
15. Clonax-2 (190 tablets)
16. Clox-2MD (430 tablets)
17. Copax-0.25 (300 tablets)
18. Clonax-0.25 (200 tablets)
19. Etizest Forte (200 tablets)
20. Clonax-1 (200 tablets)
21. Betapro-40 (100 tablets)
22. Lorax-1 (80 tablets)”

4. All the above mentioned 22 medicines/drugs fall under ‘Schedule - H/H-1’ drugs under Drugs & Cosmetics Rules, 1945 and have constituents, which would qualify to be Narcotic/Psychotropic Substance.
5. Learned counsel for the petitioner submits that the petitioner is a doctor by profession having degrees of M.B.B.S. as well as M.D. in the subject of Psychiatry and, as such, is fully competent to treat addicts for the purpose of their de-addiction. Learned counsel has further submitted that the drugs in question were never recovered from physical possession of the petitioner or from any premises owned by her but were allegedly recovered from a clinic being run by Dr. Amardeep Singh Kohli, where petitioner was allegedly present.

6. Learned counsel for the petitioner has next submitted that there is no evidence to show that the drugs recovered from the clinic of Dr. Amardeep Singh Kohli were actually those drugs, which had been supplied to some Government Hospital, inasmuch there is no such identification w.r.t. their batch number etc. It has further been submitted that even if all the allegations as levelled by the prosecution are taken to be correct, the same at best would constitute some violation under Drugs & Cosmetics Act and cannot be said to constitute any offence under NDPS Act particularly in view of Rule 66 of NDPS Rules.
7. Opposing the petition, learned State counsel has submitted that the allegations as levelled by the prosecution clearly show that the petitioner had been selling drugs to addicts under the garb of de-addiction medicines, whereas she was not competent to run any de-addiction clinic for which a specific license is issued. It has further been submitted that even Dr. Amardeep Singh Kohli had not been issued "De-addiction License". Learned State counsel has further submitted that since the petitioner was caught red-handed while accepting an amount of Rs.2,550/- from the complainant for the purpose of sale of prohibited drugs and huge quantity of drugs were recovered, her complicity is clearly evident.
8. Learned State counsel, while relying upon judgment of Hon'ble the Supreme Court in Union of India and another Versus Sanjeev V. Deshpande reported as 2014(4) R.C.R. (Criminal) 75 as well as judgment passed by this Court in Inderjeet Singh @ Laddi and others Versus State of Punjab reported as 2014(3) R.C.R. (Criminal) 953, contends that the circumstances under which the drugs were recovered, would clearly attract offences under NDPS Act.

9. This Court has considered the rival submissions addressed before this Court.
10. There are not only specific allegations to the effect that the petitioner used to sell 'Schedule – H/H-1' drugs to addicts under the garb of de-addiction, but the said allegation stands *prima facie* substantiated from the fact that when a trap was laid, the petitioner was caught red-handed while accepting an amount of Rs.2,550/- from the complainant for the purpose of sale of prohibited drugs. When the petitioner was caught red-handed from the clinic of Dr. Amardeep Singh Kohli, the search of said premises led to recovery of huge quantity of drugs for which the petitioner could not furnish any justification. As a matter of fact, there is nothing on record to show that the aforesaid Dr. Amardeep Singh Kohli had been authorized to store such drugs. Even petitioner is not authorized to run any de-addiction centre.
11. The ratio of judgments pressed into service by learned State counsel leave no manner of doubt that the present circumstances would attract offences under NDPS Act. The relevant extract from *Inderjeet Singh @ Laddi's case (supra)* is reproduced hereinunder:

“32. Similarly, in the case of *Rani v. State of Punjab (CRM No.M-14461 of 2012)* 2170 Parvon Spas capsules and 900 other capsules having mark of Subhimol were recovered. As per the Chemical Examiner's Report, the Parvon Spas capsules contained salt Dextropropoxyphene Hcl 74.90 mg and capsules Subhimol contained salt of Dextropropoxyphene Hcl 74.96 mg. In Mohd. Shamshad v.State of Punjab (CRM No. M-20282 of 2012), 500 capsules of Parvon Spas were recovered which as per the Chemical Examiner's report contained Dextropropoxyphene Hcl. Mostly the manufactured drugs in respect of which there is a contravention contain Dextropropoxyphene, Codeine and these according to the learned counsel for the petitioners are not 'manufactured drugs' so as to come within the purview of the NDPS Act. However, in terms of

notification dated 14.11.1985 these are specifically mentioned as 'manufactured drugs' and contravention of these would be an offence under Section 21 of the NDPS Act, which relates to punishment for contravention in relation to manufactured drugs and preparations; though these may also be an offence under the D&C Act and the 1945 Rules. The question that these provide for exception would not be of much consequence as these are carried in a bulk form and in such a manner that they are not intended to be used for medicinal purposes but are intended to be used for intoxication and getting a stimulating effect. These are mostly used as sedatives to go into a trance. Besides, when these are carried in a bulk form without proper authorization or licence, then these would fall within the violations provided for under the NDPS Act and the NDPS Rules. The questions of these being within the exception provided for per dose usage would be inapplicable especially when there is no proper authorization or licence.”

12. A similar question had been raised before Hon’ble the Supreme Court in Union of India and another’s case (supra) and which was referred to a larger bench by passing the following order:

“Our attention has been invited by the learned counsel to two decisions of this Court; namely, a decision of 3-Judge Bench in Collector of Customs, New Delhi Vs. Ahmadalieva Nodira, 2004(2) RCR (Criminal) 192 : (2004) 3 SCC 549 and subsequent decision of 2-Judge Bench in State of Uttaranchal Vs. Rajesh Kumar Gupta, 2006(4) RCR (Criminal) 974 : (2007) 1 SCC 355.

Reference was also made of Section 80 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as under:

“80. Application of the Drugs and Cosmetics Act, 1940 not barred—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

In our opinion, in view of the fact that the effect of Section 80 requires to be considered, we grant leave and direct the Registry to place the papers before the Hon'ble the Chief Justice for placing the matter before a 3-Judge Bench.”

13. Hon'ble the Supreme Court in Union of India and another's case (supra) upon considering the aforesaid issue concluded as under:

“34. On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of dealing in psychotropic substances and the conditions subject to which such dealing in is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta's case in our view is wrongly decided.

35. In view of our conclusion, the complete analysis of the implications of Section 82[15] of the Act is not really called for in the instant case. It is only required to be stated that essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of 1940 Act.

*[15] Section 80. Application of the Drugs and Cosmetics Act, 1940 not barred. The provisions of this Act or the rules made thereunder

shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

36. In the light of our above conclusion the correctness of the orders impugned in all the Criminal Appeals is normally required to be considered by the Bench of appropriate strength. However, in view of the fact that most of these matters are old matters [pertaining to years 2006 to 2013], we deem it appropriate to remit all these matters to the concerned High Courts for passing of appropriate orders in the light of this judgment.”
14. The judgments as referred to above have clearly held that in cases where a person is found in possession of huge quantity of “Schedule – H/H-1” drugs would constitute offences under NDPS Act.
15. As far as the contention of the petition regarding Rule 66 of NDPS Rules is concerned, a perusal of the same would show that certain exceptions have been carved out therein in cases where such drugs are possessed for medical, scientific and training purposes. However, the case of the petitioner does not fall in any of these categories so as to be extended benefit of Rule 66 of NDPS Rules. No other argument has been raised or addressed before this Court. As such, this Court does not find any ground for quashing of the FIR. The petition is sans merit and is hereby dismissed.
16. A copy of this order be conveyed to the Trial Court concerned with a direction to proceed with the matter expeditiously.

9.5.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No