

CRM-M-44239-2014 (O&M) AND CONNECTED MATTER - 1-
2023:PHHC:166617

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44239-2014 (O&M)
Date of Decision: 11.12.2023

Dr. Jasdeep Kaur and Anr. ...Petitioners

vs.

State of Punjab ...Respondent

(ii) CRM-M-805-2015 (O&M)

Sukhjinder Singh ...Petitioner

vs.

State of Punjab ...Respondent

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present : Mr.L.M Gulati, Advocate
for the petitioner(s).

Mr. M.S Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. This order shall dispose off two petitions i.e CRM-M- 44239-2014 (O&M) titled as “Dr.Jasdeep Kaur and Anr. Vs. State of Punjab” and CRM-M-805-2015 (O&M) titled as “Sukhjinder Singh Vs. State of Punjab” whereby the petitioners in both the petitions have prayed for quashing of the complaint (Annexure P-4 in CRM-M-44239-2014 and Annexure P-2 in CRM-M-805-2015) bearing No.25 dated 12.04.2014 titled as “State through Drugs Inspector Gurdaspur-1 Vs. Sukhjinder Singh and others” pending before the Court of Chief Judicial Magistrate, Gurdaspur and all other consequential proceedings arising therefrom.
2. Dr. Jasdeep Kaur and Dr. Chetan Nanda (petitioners in CRM-M-44239-2014 (O&M) are qualified medical practitioners/doctors by profession.

**CRM-M-44239-2014 (O&M) AND CONNECTED MATTER - 2-
2023:PHHC:166617**

Petitioner No.1 is a MBBS doctor and has registered with the Punjab Medical Council vide registration certificate (Annexure P-1). The petitioner No.2 is the husband of petitioner No.1 and is a child specialist. Even the petitioner No.2 has registered with the Punjab Medical Council vide registration certificate (Annexure P-2). In fact, petitioner No.1 owned a plot, opposite PWD Rest House, Gurdaspur and she was constructing a Nursing Home on the said plot. One room in the building was completed, which was being used by her as OPD and she had kept certain medicines for dispensing the same to her patients in that clinic. The petitioner No.2 was working with the Punjab Civil Medical Services and was posted at Government Hospital, at Fatehgarh Churian. He was having some dispute with the Civil Surgeon and the Civil Surgeon had sent the team of Drug Inspectors along with others at the clinic of petitioner No.1. The team of Drug Inspector and others entered the hospital of petitioner No.1 on 19.08.2010 at about 10:00 AM and both the petitioners were not present at their hospital. Sukhjinder Singh (petitioner in CRM-M-805-2015), who was working as a Caretaker-cum-Watchman, was found at the spot. They forced Sukhjinder Singh, petitioner to open the lock of the room, which was used as OPD clinic by Dr. Jasdeep Kaur, petitioner No.1. They broke open the lock of the OPD after confining Sukhjinder Singh and took into their possession the medicines worth Rs.60,000/-.Thereafter, the complaint (Annexure P-4) under Section 18 (c) and Section 18-A punishable under Section 27 (b) (ii) and 28 of Drugs and Cosmetics Act, 1940 was filed by the respondent on 22.04.2014.

3. Learned counsel for the petitioners contend that the petitioners have been falsely involved in the present case. In fact, Civil Surgeon was highly

**CRM-M-44239-2014 (O&M) AND CONNECTED MATTER - 3-
2023:PHHC:166617**

inimical towards Dr. Chetan Nanda, petitioner No.2 and was looking for a suitable occasion to falsely involve him and his wife, Dr. Jasdeep Kaur. Even the raid was conducted on 19.08.2010 and vide the order dated 23.08.2010 (Annexure P-3), the Civil Surgeon had even cancelled the earned leave of Dr. Chetan Nanda, petitioner No.2. The petitioner No.2 was also asked to vacate his house during the examination of his children, despite the Government instructions to the contrary. Even the petitioner No.2 finally resigned in February 2012, but his resignation was not accepted by the competent authority at the instance of Civil Surgeon. Ultimately, after a period of almost 04 years, on 22.04.2014, the present complaint (Annexure P-4) was filed by the Drug Inspector. Vide the order dated 22.01.2014 (Annexure P-9), all the petitioners were ordered to be summoned by the Trial Court.

4. Learned counsel for the petitioners further contends that the premises in question was being used by the petitioner No.1 as her OPD and in view of Sections 15 and 27 of the Indian Medical Council Act, 1956 the petitioner No.1 is entitled to practice in any State. Even during the course of practicing of medicines, she has a right to stock drugs/medicines in small quantity, for dispensing the same to her clients. The possession of the medicines simplicitor cannot be made punishable under Section 27 of the Act nor the petitioners could be prosecuted under Section 18(c) as read with Section 18-A of the Act. Still further, it was necessary for the Drug Inspector to tender the price and purchase drug/medicine as per Section 23(2) of the Act. Since the drugs/medicines were not purchased by her, it clearly shows that the drug/medicine was not for sale and it was only the stock in small quantity to

dispense to the patients of petitioner No.1. Even the provisions of Section 23(2) of the Act are mandatory and the non-compliance thereof vitiates the entire proceedings. Learned counsel further contends that the delay of 04 years in filing the present complaint also strikes at the root of the case and the complainant was well aware of the fact there was no merit in the allegations levelled by him. Still further, Sukhjinder Singh (petitioner in CRM-M-805-2015) was working as a Caretaker-cum-Watchman with petitioner No.1 and he had been un-necessarily ordered to be prosecuted. In fact, Sukhjinder Singh was an employee of Dr. Jasdeep Kaur,petitioner No.1 and was present at the OPD, being her employee.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioners on the ground that the petitioners had contravened the mandatory provisions of the Act and no drug could be stocked for sale and distribution at the unlicensed premises. Still further, the medicines were taken into possession by the complainant, after following the mandatory provisions of law and the petition (s) are liable to be dismissed by this Court.

6. I have heard learned counsel for the parties and perused the record.

7. Section 18 of the Drugs and Cosmetics Act, 1940 prohibits the manufacture, sale etc. of certain drugs and cosmetics, which reads as under:-

18. Prohibition of manufacture and sale of certain drugs and cosmetics. -
From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

(a).....

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of

the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

8. Still further, the punishment for contravening the provisions of Section 18 (c) is provided under Section 27(b) (ii) which is reproduced as under:-

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter- Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes-

(a) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(b) any drug-

(i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

9. Still further, Section 33 of the Act, empowers the Central Government to make rules and Rule 123 exempts certain drugs from the provisions of Chapter IV of the Act, which includes Sections 18 and 27 of the Act.

Rule 123 reads as under:-

Prohibition of manufacture and sale of certain drugs and cosmetics. - From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

- (a).....
- (b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;
- (c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:
Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:
Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter- Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes-

- (a) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
- (b) any drug-

CRM-M-44239-2014 (O&M) AND CONNECTED MATTER - 7-
2023:PHHC:166617

(i) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

"123. The drugs specified in Schedule K shall be exempted from the provisions of Chapter IV of the Act and the rules made thereunder to the extent and subject to the conditions specified in that Schedule."

Entry No. 5 under Schedule (K) are the drugs which are supplied by a registered medical practitioner with which we are presently concerned. The relevant provision of Schedule (K) reads as under:-

Schedule K
(See Rule 123)

Class of Drugs	Extent and Conditions of Exemptions
1.xxxxxxxxxxxxxx	xxxxxxxxxxxxxx
2.xxxxxxxxxxxxxx	xxxxxxxxxxxxxx
3.xxxxxxxxxxxxxx	xxxxxxxxxxxxxx
4.xxxxxxxxxxxxxx	xxxxxxxxxxxxxx
5.Drugs supplied by a registered medical practitioner to his own patient or any drug specified in Schedule C supplied by a registered medical practitioner at the request of another such practitioner if it is specially prepared with reference to the condition and for the use of an individual patient <u>provided the registered medical practitioner is not (a) keeping an open shop or (b) selling across the counter</u> or (c)engaged in the importation, manufacture, distribution or sale of drugs in India to a degree which render him liable to the provisions of Chapter IV of the Act and	All the provisions of Chapter IV of the Act and the Rules made thereunder, subject to the following conditions: [1. The drugs shall be purchased only from a dealer or a manufacturer licensed under these rules, and records of such purchases showing the names and quantities of such drugs, together with their batch numbers and names and addresses of the manufacturers shall be maintained. Such records shall be open to inspection by an Inspector appointed under the Act, who may, if necessary, make enquiries about purchases of the drugs and may also take

CRM-M-44239-2014 (O&M) AND CONNECTED MATTER - 8-
2023:PHHC:166617

the rules thereunder:	samples for test.] 2.In the case of medicine containing a substance specified in [Schedule G, H or X] of the following additional conditions shall be complied with: a. the medicine shall be labelled with the name and address of the registered medical practitioner by whom it is supplied; b.if the medicine is for external application, it shall be labelled with the words [***] "For ?external use only" or, if it is for internal use with the dose; c.the name of the medicine or ingredients of the preparation and the quantities thereof, the dose prescribed, the name of the patient & the date of supply and the name of the person who gave the prescription shall be entered at the time of supply in register to be maintained for the purpose; d.the entry in the register shall be given a number and that number shall be entered on the label of the container; e. the register and the prescription, if any, on which the medicines are issued shall be preserved for not less than two years from the date of the last entry in the register or the date of the prescription, as the case may be. 3.The drug will be stored under proper storage conditions as directed on the label.]. 4. No drug shall be supplied or dispensed after the date of expiration of potency recorded on its container, label or wrapper or in violation of any statement or direction recorded on such container, label or wrapper.]
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(emphasis supplied)

10. In the present case, Dr.Jasdeep Kaur was duly registered with Punjab Medical Council vide registration certificate (Annexure P-1) and it can never be held that the medicines were stocked for sale and she can never be prosecuted by the respondent. In fact, it is a matter of common experience that small quantity of medicines are found in the premises of every registered medical practitioner, which he is entitled to keep in view of the provisions of Indian Medical Council Act and Drugs and Cosmetics Act. Still further,

the Rule 123 permits the medical practitioner to keep such medicines in her clinic.

11. The Hon'ble Supreme Court has held in the matter of **"S.Athilakshmi Vs. State Rep. By the Drug Inspector"** as follows:

"9.Considering the small quantity of medicines, most of which are in the category of lotions and ointments, it cannot be said by any stretch of imagination that such medicines could be 'stocked' for sale and would come in the category of stocking of medicines for the purpose of sale. When small quantity of medicine has been found in the premises of a registered medical practitioner, it would not amount to selling their medicines across the counter in an open shop. In fact, this is not even the allegation against the Appellant. Undoubtedly, the provisions of Section 18 and 27 are relevant provisions under the law, which have a social purpose, which is to protect ordinary citizens from being exploited inter alia, by unethical medical practitioners, and for this reason the punishment under Section 27 can extend up to 5 years under the law, and has a minimum punishment of 3 years. But given the facts and circumstances of the case and considering that the Appellant is a registered medical practitioner, along with the fact that the quantity of medicines which have been seized is extremely small, a quantity which can be easily found in the house or a consultation room of a doctor, in our considered view no offence is made out in the present case. In fact, an exception has been created under Schedule 'K' read with Rule 123 to the rules, the appellant ought to have been given the benefit of these provisions and such a registered medical practitioner should not have been allowed to face a trial where in all likelihood the prosecution would have failed to prove its case beyond reasonable doubt. The learned single judge while dismissing the application under Section 482 Cr.P.C , 1973 of the appellant has relied upon a decision of this Court:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C., 1973 for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of The Court may also be entitled to see {i) whether the preconditions requisite for taking cognizance have been complied with or not; and {ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged

.....

13.A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage "

"10. But what the High Court failed to consider, however, is the provisions contained in Rule 123 read with Schedule `K' to the 1945 Rules and when admittedly it is not the case of the prosecution that the drugs which were seized were being sold in an open shop across the counter. Since this was not being done as visualized above, and an exception is created under the law in favour of the medical practitioner where the drugs given in Schedule `K' would be exempted from the purview of Chapter 4 of the Act, we are of the considered view that prosecution against the Appellant is unwarranted.

12. Still further, the Hon'ble Supreme Court also held in the matter of

"Mohd. Shabir Vs. State of Maharashtra 1979 1 SCC 568, which is as

follows:-

“4. ...We, therefore, hold that before a person can be liable for prosecution or conviction under Section 27(a)(i)(ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simplicitor of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant.”

13. Thus, it is apparent that in the present case, the petitioner No.1 Dr. Jasdeep Kaur was found to be possessing small quantity of drugs/medicines in her OPD and the exception created in favour of medical practitioner under Rule 123 read with Schedule “K” would permit her to keep such medicines. However, while passing the impugned summoning order, the said fact has been overlooked by the Trial Court.

14. Thus, in view of the above discussion, both the petition succeeds and the impugned complaints (Annexure P-4 in CRM-M-44239-2014 and Annexure P-2 in CRM-M-805-2015), summoning order (Annexure P-9) and all subsequent proceedings emanating therefrom are hereby ordered to be quashed.

15. Pending application(s), if any, stand(s), disposed off, accordingly.

11.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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