

CRA-S-4508-SB-2017

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

CRA-S-4508-SB-2017

Decided on:-13.02.2024

State of Punjab

....Appellant..

vs.

Rajinder Kumar @ Raja

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kewal Singh, Addl. A.G., Punjab.

Mr. Tarunveer Vashisht, Advocate with
Mr. Shoryaveer Vashist, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present appeal challenge has been laid to the judgment dated 16.08.2017 passed by learned Judge, Special Court, Patiala, whereby, the respondent was held guilty and convicted for commission of offence punishable under Section 21 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “1985 Act”) and was sentenced to undergo RI for the period already undergone i.e. 06 months & 02 days besides imposition of fine of Rs.3000/- and in case of default, RI for 15 days, in case FIR No.154 dated 03.10.2013, registered under Section 22 of the 1985 Act, Police Station Urban Estate, Patiala.

2. In the present case, against the alleged recovery of 1130 loose intoxicating capsules containing salt of “*Dextropropoxyphene Napsylate*”, the aforementioned FIR was registered against the respondent and upon investigation, challan was filed against him. In pursuance thereof, charges

were framed against the respondent in terms of Section 22 of the 1985 Act.

3. Upon trial, the respondent was held guilty for commission of offence under Section 21 (a) of the 1985 Act, being in possession of small quantity of intoxicating capsules and was sentenced to undergo RI for the period already undergone i.e. 06 months & 02 days besides fine of Rs.3000/-.

4. Impugning the aforesaid judgment of conviction & order of sentence, learned counsel for the appellant-State submits that once the recovery of 1130 loose intoxicating capsules containing salt of “*Dextropropoxyphene Napsylate*”, was proved against the respondent, the entire quantity was required to be considered rather than only 10 capsules, which were sent for forensic science laboratory and thus, the Court below committed material illegality while passing the less sentence.

5. On the other hand, learned counsel representing the respondent while relying upon a decision made by Hon’ble Supreme Court in case titled as “*Gaunter Edwin Kircher vs. State of Goa, Secretariat Panji, Goa*” 1993 *AIR (Supreme Court) 1456*, submits that there was no illegality in the approach adopted by the Trial Court as admittedly, the recovery in the case as set-up by the prosecution relates to 1130 loose unbranded capsules, out of which only 10 capsules were sent to FSL for analysis and thus, the sample sent by the prosecution not being of homogeneous nature, the entire recovery of 1130 loose capsules could not have been termed to be carrying intoxicant salt in the shape “*Dextropropoxyphene Napsylate*”,

6. I have heard learned counsel for the parties and gone through the paper-book.

7. In the present case, the case set-up by the prosecution is that 1130 unbranded loose capsules were recovered from the petitioner, out of which two samples of 10 capsules each were separated and therefrom only one sample was sent to FSL. As per report of FSL (Ex.PL), 648 mg of “*Dextropropoxyphene Napsylate*”, was found in each capsule.

8. In the facts and circumstances of the present case, once the recovery of 1130 loose unbranded capsules was effected and only 10 capsules were sent to FSL for examination, the entire recovery could not have been presumed to have contained the salt of “*Dextropropoxyphene Napsylate*”,. Reliance in this regard can be placed upon relevant observations made in para 5 of ***Gaunter Edwin Kircher’s*** case (Supra), which are reproduced as under:-

“.....As already mentioned only one piece was sent for chemical analysis and P.W. 1, the Junior Scientific Officer who examined the same found it to contain Charas but it was less than 5 gms. From this report alone it cannot be presumed or inferred that the substance in the other piece weighing 7 gms. also contained Charas. It has to be borne in mind that the Act applies to certain narcotic drugs and psychol, tropic substances and not to all other kinds of intoxicating substances. In any event in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it is not safe to hold that 12 gms. of Charas was recovered from the accused. In view of the evidence of P.W. 1 it must be held that the prosecution has proved positively that Charas weighing about 4.570 gms. was recovered from the accused. The failure to send the other piece has given rise to this inference.....”

Even, the Trial Court has discussed the aforesaid issue in detail

in para 25 of its judgment. The relevant portion thereof is reproduced as under:-

“25. As per prosecution story 1130 loose capsules which were allegedly intoxicating capsules were recovered from the accused and only 2 samples of 10 capsules of each were separated whereas only one sample of 10 capsules was sent for Forensic Science Laboratory, Mohali. As per report of FSL Ex. PL, 10 capsules of blue colour were received and the average weight of per capsule was 648 mg and contents thereof were Dextropropoxyphene Napsylate. The plea taken by learned defence counsel is that the remaining 1120 capsules cannot be presumed to be containing the said salt and the entire bulk of capsules allegedly recovered was required to be sent to the FSL, otherwise no presumption can be drawn that the remaining capsules are also containing the said salt. The capsules were recovered from the accused are not branded capsules. Admittedly, as per prosecution case the capsules allegedly recovered were loose. IO has stated during cross examination that all the capsules were loose capsules and were not in strips or in any pouches. He had not noted any date of manufacturing, date of expiry and batch number or the name of manufacturer upon any of the documents of the present case. He was not a medical expert. He had no knowledge regarding the types of various medical salts as well as the salt of the present capsules. He was not having salt attesting kit at the spot. The capsules were not made homogeneous before drawing the samples. So, in view of the same when only 10 capsules were sent for chemical examination, by no stretch of imagination it can be believed that the remaining 1120 capsules also contained the salt Dextropropoxyphene Napsyhte. The sample as drawn by the IO in any manner cannot be said to be the representative sample of the entire bulk of the loose capsules when each capsule has an independent entity and more so, such kind of capsules are available in the market and the possibility that they may not

contain the salt Dextropropoxyphene Napsyhte, cannot be ruled out. As such, until the total contraband was sent for chemical examination, it cannot be considered to be the same on the basis of sample of 10 capsules, which were sent for chemical examination.....”

9. In view of the discussion made hereinabove, finding no illegality or perversity with the reasoning recorded by the Court below, the same being in consonance with the law laid down by this Court in case of **“State of Punjab vs. Dharam Singh”, 2010 (3) RCR (Criminal) 94**, the present appeal is dismissed.

13.02.2024
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(HARKESH MANUJA)
JUDGE

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