2026:PHHC:036755

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

367

CRA-S-1804-SB-2011 (O&M)
Date of decision: 10.03.2026

State through Senior Drugs Inspector, Rohtak Zone, Rohtak

...Appellant (s)

VERSUS

Ram Narain Saini and another

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Armaan Dahiya, DAG Haryana.

Ms. Khushboo Ansari, Advocate for the respondent(s)
(Legal Aid Counsel).

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VINOD S. BHARDWAJ, J. (Oral)

1. The present appeal has been preferred against the judgment dated 09.03.2010 passed by the Chief Judicial Magistrate, Rohtak in Criminal Complaint No.204/2 of 2000 titled as 'State through Senior Drugs Inspector, Rohtak Zone, Rohtak Vs. Ram Narain Saini and another' arising out of complaint under Section 18/27 of the Drugs & Cosmetics Act, 1940 and rules made thereunder, whereby the accused were acquitted from the charges levelled against them.

2. The complaint in question was filed by the State through the Senior Drugs Inspector, Rohtak Zone, Rohtak against the accused-respondent(s) alleging therein that on 07.07.1998, the complainant, alongwith the District Drug Inspector, conducted an inspection of the clinic of Dr. Sunil Verma, BAMS, situated at Sukhpura Chowk, G.T. Road, Rohtak, acting upon secret information that respondent No.2, namely M/s.

International Cosmo Chemical, Rohtak, had supplied a drug known as Proteomin Syrup to Dr. Sunil Verma. During the course of the said inspection, it was found that Dr. Sunil Verma had stocked 25 bottles of Proteomin Liquid (200 ml each), bearing Batch No. 36, manufactured in November 1996 and having an expiry date of October 1998, which had been manufactured by respondent No.2 – M/s. International Cosmo Chemical, Rohtak alongwith other drugs for the purposes of sale and distribution to his patients.

3. The District Durg Inspector purchased the Proteomin liquid from Dr. Sunil Verma for the purpose of drawing a sample, thereafter, the sample so obtained was sent to the Govt. Analyst, Haryana for testing/analysis and vide letter dated 09.07.1998, the accused/respondents were called upon to furnish an explanation regarding manufacturing and sale of the aforesaid drug without possessing a valid license for its manufacture and for having sold the said drug during the period when the licence of the manufacturing unit stood suspended.

4. It was further averred that the State Drugs Controller, Haryana, Chandigarh issued a show-cause notice to the accused-firm and reply to the said notice dated 22.09.1998 was also received from the firm. It was also stated that, upon receipt of the test report from the Government Analyst, Haryana, it was observed that the contents of the active ingredients in the sampled drug had not been expressed in the manner prescribed under Rule 96(iii)(a) of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as '***the Act of 1945***'). Finding it to be a case of misbranding in view of the provisions under Section 17(b) of the Act of 1945, the proceedings were

initiated.

5. It was further alleged that no reply was received from the accused-firm to the communication dated 09.07.1998. Thereafter, the State Drugs Controller, Haryana granted sanction for prosecution of the accused–respondent(s). Pursuant to the said sanction, the present complaint came to be filed, alleging that the accused–respondent(s) had contravened the provisions of Section 18(c) of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder by manufacturing the drug “Proteomin Syrup” for sale and by effecting its sale without possessing a valid licence for the relevant period.

6. It was further alleged that the acts attributed to the accused–respondent(s) also constituted offences punishable under Section 27(b)(ii) and Section 18(a)(i) read with Section 17(b) of the Drugs and Cosmetics Act, 1940, as well as Rule 96 of the Drugs and Cosmetics Rules, 1945 and the said violations rendered the respondents liable for punishment under Section 27(d) of the Act. On the basis of the aforesaid allegations, appropriate legal action against the accused–respondent(s) was sought through the present complaint.

7. Vide order dated 07.03.2000, the Chief Judicial Magistrate, Rohtak passed an order for trying the case as a warrant case whereupon notice was issued to the respondents and there were admitted to bail. Pre-charge evidence was recorded.

8. After hearing the parties and considering the respective submissions advanced on their behalf, the Trial Court proceeded to examine the material placed on record. The case of the prosecution was that the

respondent–accused had manufactured and sold “Proteomin Syrup” without possessing a valid drug manufacturing licence, the State asserting that the said product fell within the definition of a “drug” under the relevant provisions of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder.

9. The defence, on the other hand, contended that Proteomin Syrup was not a drug but merely a food supplement, and therefore no licence for its manufacture was required under the Act. While evaluating the evidence, the learned Trial Court noticed that the memo (Ex. P4) issued by the Senior Drugs Inspector specifically described Proteomin Syrup as a “food supplement” in the column relating to dosage. The Court further observed that although the complainant had alleged that no permission had been granted for the manufacture of Proteomin Syrup, it had been admitted during cross-examination that permission for manufacturing had in fact been sought, albeit with a composition different from that reflected in Ex. P4. The Trial Court also took note of the testimony of Dr. Sunil Verma, who appeared in the witness box and deposed that the syrup had been purchased by him as a food supplement, as reflected in document Ex. P3. The said witness also acknowledged that in Ex. P4 the product had been described as a food supplement in relation to dosage. In view of these circumstances, the learned Trial Court observed that a serious doubt arose as to whether the product in question was indeed a “drug” requiring a licence for manufacture, or merely a food supplement for which no such licence was necessary. On the basis of the aforesaid reasoning, the learned Trial Court came to the conclusion that the prosecution had failed to establish beyond reasonable

doubt that the respondents had manufactured a drug without the requisite licence, and consequently recorded an order of acquittal in favour of the respondent–accused. Aggrieved thereof, the instant appeal had been filed.

10. The appeal was admitted for hearing. However, it is noticed that despite the lapse of nearly fifteen years since the admission of the appeal, no one has appeared on behalf of the respondent–accused. Accordingly, Ms. Khushboo Ansari, Advocate (PH/6466/2023, Mob. No.79880-45769), who is present in the Court is nominated as a Legal Aid Counsel to assist this Court on behalf of respondent(s)-accused. She has gone though the case file and assisted this Court after perusing the same.

11. Learned State counsel has contended that the findings recorded by the Trial Court are the result of a misappreciation of the evidence brought on record, particularly the testimony of PW-1 G.L. Singal, Senior Drugs Inspector. It is submitted that although Ex. P-4 contains a reference describing Proteomin Syrup as a food supplement, the said document merely reproduces the composition as reflected on the label, and the Trial Court has erroneously construed the same as conclusive proof that the product in question was a food supplement. It is further argued that PW-1 G.L. Singal, in his deposition before the Court, clearly stated that the composition of Proteomin Syrup corresponded with that mentioned in Ex. P-1, which was the list of products submitted by the accused for approval before the State Drugs Controller, Haryana. According to the learned State counsel, the Trial Court has incorrectly interpreted Ex. P-4 by treating it as determinative of the nature of the product, whereas the document only reflects the repetition of the composition appearing on the label of the product. Counsel further

contends that the trial Court erred in accepting the oral plea raised on behalf of the respondent-accused that the product in question had been manufactured as a food supplement and not as a drug. It is contended that the respondent-accused failed to produce any cogent or convincing evidence to establish that the sample taken from the clinic had been manufactured or marketed as a food product rather than a drug and mere description of the product as a food supplement on the label could not by itself alter the statutory character of the preparation, particularly when the composition and intended use of the product fell within the regulatory framework governing drugs. He further contends that the Trial Court has recorded an erroneous finding in observing that the mention of Proteomin Syrup as a food supplement in Ex. P-4 created a doubt regarding its classification or usage. Learned State counsel contends that Proteomin Syrup does not fall within the category of products exempted from the requirement of a drug licence, and that the Trial Court has incorrectly applied the provisions relating to exemption under Serial Nos. 1 and 10 of Schedule ‘K’ of the Drugs and Cosmetics Rules on the basis of the label description alone.

12. Learned legal aid counsel appearing on behalf of the respondent(s)-accused, however, contends that the trial Court has fully considered all the arguments and specifically recorded a finding that Proteomin Syrup was a food supplement and not a drug within the meaning of the relevant statutory provisions. It is further submitted that the notice issued by the State itself, namely Ex. P4, describes the composition of Proteomin Syrup as that of a food supplement, and the said document was issued by the authorities under the Act. Learned counsel points out that the

memo refers to the dosage of Proteomin Syrup, and against the dosage the product has been specifically described as a food supplement, which lends support to the defence version that the product was not treated as a drug at the relevant time. She further contends that State itself admitted during the course of proceedings that no permission from the State Drugs Controller is required for the manufacture of a food supplement, and therefore the very basis of the prosecution allegation that the accused manufactured the product without a valid drug licence becomes unsustainable. It is further submitted that PW-1 being the Senior Drug Inspector himself appeared and admitted in his cross-examination that the composition of Item No. 6 on page 8 of Ex. P21, for which permission had been sought from the State Drugs Controller, was different from the composition of Proteomin Syrup reflected in Ex. P4. Learned counsel has further pointed out that Dr. Sunil Verma, from whose clinic the Proteomin Syrup was recovered, appeared in the witness box and categorically stated that he used to prescribe the said product as a food supplement. She thus contends that the Trial Court has correctly appreciated the material on record and has taken into account all the arguments advanced by the parties before arriving at the conclusion that the prosecution had failed to establish that the product in question was a drug requiring a manufacturing licence. Accordingly, it is submitted that the judgment of acquittal recorded by the learned Trial Court does not suffer from any legal infirmity warranting interference in the present appeal.

13. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

14. The entire case of the appellant-State is rests upon the premise that “Proteomin Syrup” constituted a drug formulation within the meaning of the provisions of the Drugs and Cosmetics Act and the Rules framed thereunder. The said foundation of the case, however, stands demolished by the fact that the complainant itself, including the prosecution witnesses acknowledged that the notice Ex.P4 sent by them to the respondent(s)-accused explicitly described Proteomin Syrup as a “food supplement” and not as a drug formulation. The prosecution witnesses were also confronted with document Ex. P1, wherein Proteomin Syrup was mentioned as a scheduled drug, however, the composition and formulation of the Proteomin Syrup, as reflected in the schedule under the Rules, were materially different from the composition of the product recovered from the possession of the respondent–accused. In other words, the chemical formulation and ingredients of the product recovered during inspection did not correspond with the formulation of the scheduled drug referred to in the regulatory framework. In these circumstances, the mere similarity in the name or nomenclature of the product cannot by itself lead to the conclusion that the product recovered from the respondent–accused was a drug requiring a licence for manufacture or sale.

15. The arguments being advanced by the complainant that the respondent–accused had failed to produce any licence or permission authorizing the manufacture of Proteomin Syrup is misconceived. The requirement of obtaining a manufacturing licence would arise only if the prosecution had first been able to establish that the product in question was indeed a drug formulation falling within the regulatory framework of the Act

and the Rules and that it corresponded to the composition and formulation prescribed under the relevant schedule, as reflected in Ex. P21. However, the material placed on record indicate that the very authorities who initiated the proceedings had themselves described Proteomin Syrup as a food supplement in the notice issued to the respondent–accused (Ex. P4). The said document, emanating from the complainant authority itself, refers to the dosage of Proteomin Syrup and categorically records it as a food supplement. This position is further reinforced by the evidence of the doctor from whose clinic the product was recovered, who also deposed that the syrup was being prescribed as a food supplement. Once the prosecution's own notice describes the product as a food supplement and the evidence on record supports its use and prescription as such, the fundamental character of the prosecution case cannot be altered merely by referring to another formulation under the Rules which bears a similar name but contains a different composition. In the absence of proof that the product manufactured or sold by the respondent–accused corresponded with the drug formulation contemplated under the statutory schedule, the question of requiring a licence for its manufacture does not arise. Consequently, the argument that the respondent–accused failed to produce a licence loses its legal force, since the very premise on which such a requirement would arise has not been established by the prosecution.

16. Under the given circumstances, I am of the view that the State is not able to discharge the primary burden of proving the case against the accuse that the Proteomin Syrup produced by them was in fact governed under the Act of 1945 and the Rules framed thereunder. In the absence of

bringing the composition and formulation of the Proteomin Syrup within the parameters of the governing rules, a prosecution would not be successfully established, consequently, the appeal is ***dismissed*** and the judgment dated 09.03.2010 passed by the Chief Judicial Magistrate, Rohtak in Criminal Complaint No.204/2 of 2000 titled as 'State through Senior Drugs Inspector, Rohtak Zone, Rohtak Vs. Ram Narain Saini and another' is hereby ***affirmed***.

17. A copy of this order be sent to the High Court Legal Services Committee for information and necessary action.

(VINOD S. BHARDWAJ)
JUDGE

10.03.2026
Mangal Singh

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