

Rajeev Kumar Vs. State of Punjab

Rajeev Kumar Vs. State of Punjab

SooperKanoon Citation : sooperkanoon.com/634182

Court : Punjab and Haryana

Decided On : Oct-07-1997

Reported in : 1998CriLJ1460

Judge : M.L. Singhal, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 21, 22 and 52A(1); [Drugs and Cosmetics Act, 1940](#); Code of Criminal Procedure (CrPC) - Sections 482; Drugs and Cosmetics Rules, 1945

Appeal No. : CrI. Misc. No. 9771-M of 1997

Appellant : Rajeev Kumar

Respondent : State of Punjab

Advocate for Def. : Ananter Singh Brar, AAG

Advocate for Pet/Ap. : Rameshwar Puri, Adv.

Disposition : Petition allowed

Judgement :

M.L. Singhal, J.

1. This is a Criminal Misc. Petition filed under Section 482, Cr. P.C. by Rajiv Kumar whereby he has sought the quashing of FIR No. 59 dated 18-7-1996

registered at Police Station, Sirhind under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called as Act of 1985) against him and consequential proceedings.

2. It has been averred by him that he is proprietor of M/s. R. K. Medical Store, New Dana Mandi, Sirhind carrying on the business of wholesale Chemists under a valid drugs licence Annexure P/1 authorising to sell, stock or exhibit (or offer) for sale or distribute by retail the categories of Drugs specified in Schedule C and C (I) excluding those specified in Schedule X to the Drugs and Cosmetics Rules, 1945 and to operate pharmacy on the premises situated at G.T. Road, Bye-pass, Sirhind Mandi, District Fatehgarh Sahib.

3. According to the prosecution, on 18-7-1996 Inspector Harbhajan Singh along with Sh. M. L. Gupta, Drugs Inspector, Fatehgarh Sahib and others raided the business premises of M/s. R. K. Medical Store, Sirhind and seized the following medicines/drugs :

1. 4 x 800 Tab. Lomotil
2. 30 x 10 Tab, Lomotil
3. 85 x 2 ml. Inj. Norphin
4. 45 x 100 ml. Syp. Phensedyl
5. 16 x 8 Cap. Proxyvon
6. 8 x 8 Cap Spasmo Proxyvon
7. 8 x 18 Cap. Spasmo Prosyvon
8. 22 x 10 Tab. Dizapam.

4. According to the prosecution, the possession of the aforesaid drugs not being medicines/drugs was prohibited by the provisions of Section 22 of the Act of 1985 without licence or permit. For possession of these alleged Narcotics, case was registered against Rajiv Kumar. It is averred that medicines seized are not

Narcotics as they are drugs under the [Drugs and Cosmetics Act, 1940](#).

5. Item No. 11 Lomotil tablet is a medicine under the [Drugs and Cosmetics Act, 1940](#) as held by this Court in Criminal Misc. No. 526-N of 1996. Item No. 3 i.e. Norphin is a manufactured drug as defined in Section 2(xi)(b) of the Act of 1985 as basic salt of Norphin Bufrenorphine. Items Nos. 5, 6 and 7 have been exempted vide Notification No. SO 826 (Ei) issued by the Government of India in exercise of powers conferred under Section 2, Sub-clause (b) of Clause xi of item No. 87 i.e. Dextroproxyphe. Drugs Inspector, Sangrur in his report had categorically stated that item No. 8 mentioned in the seizure memo falls within the ambit of [Drugs and Cosmetics Act, 1940](#) and not under the Act of 1985 vide report Annexure P/4. In case of manufactured drugs the provisions of Section 21 of Act of 1985 are not attracted. Act applies to certain Narcotic drugs and Psychotropic substances and not to all kinds of intoxicating substances. In nutshell, the claim, of Rajiv Kumar is that these are all drugs alleged to-have been seized from his possession and they fall within the mischief of [Drugs and Cosmetics Act, 1940](#) and not within the mischief of Act of 1985. He is duly licensed to sell these drugs under a Licence Annexure P/1 issued to him by the Licensing Authority/Assistant Controller (State Drugs Controller) under the [Drugs and Cosmetics Act, 1940](#) and the rules framed thereunder. He is authorised to keep, sell medicines to retail Chemists and further to the consumers. For prosecution under the [Drugs and Cosmetics Act, 1940](#) complaint by the Drugs Inspector is permissible and not FIR at the instance of police.

6. This petition has been opposed by the respondent Urging that drugs recovered from the possession of the petitioner falls within the mischief of Section 22 of the provisions of Act of 1985 and therefore, offence thereunder is made out. At the time of raid, petitioner failed to produce valid licence and the original bills relating to the said items. Said items were examined by the District Drugs Inspector who vide report No. 304/96 Annexure R/1 reported that items Nos. 1 to 3 are psychotropic substances and fall within the mischief of the Act and Chemists having valid licence and valid purchase till are exempted under the provisions of Act of 1985. Items 1 to 3 are covered under the psychotropic substances whereas items Nos. 4 and 5 contains descrophemee which is a Narcotic' drug and items

Nos. 7 and 8 contained Codeine Phosphate which is also a narcotics but both of these drugs are exempted if they are in combination.

7. It was submitted by learned Counsel for the petitioner that none of the drugs alleged to have been seized from the possession of the petitioner is a narcotic drug or psychotropic substance as defined in the Act of 1985. Section 2(xiv) defines narcotic drugs as the coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs, Opium is defined in Section 2, Sub-clause (xv) as meaning (a) the coagulated juice of the Opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the Opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine.

8. 'Psychotropic substance' is defined in Section 2(xxiii) as meaning 'any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the schedule'. 'Manufactured drug' is defined in Section 2(xi) as meaning '(a) all Coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate; (b) any other narcotic substance or preparation which the Central Govt. may, having regard to the available information as to its nature or to a decision, if any, under any International convention, by notification in the Official Gazette, declare to be a manufactured drug; but does not include any narcotic substance or preparation which the Central Govt. may, having regard to the available information as to its nature or to a decision, if any, under International convention, by notification, in the Official Gazette* declare not to be a manufactured drug.

'Preparation' in relation to a narcotic drug or psychotropic substance means any one or more such drugs or substances in dosage form or any solution or mixture in whatever physical state, containing one or more such drugs or substances.

9. Sections 21, 22 of the NDPS Act, 1985 as follows :-

21. Punishment for contravention in relation to manufactured drugs and preparations :-

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 manufactured drug or any preparation containing any manufactured drug shall be punishable 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.

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 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.

10. Morphine is the principal alkaloid and the derivative of Opium, and is covered by the definition of 'manufactured drug'. In *Surinder Kumar v. State of Punjab* (1992) XIX Cr LT 33, intoxicant tablets were recovered from the Chemist shop of the petitioner. According to the report of the Forensic Science Laboratory, each tablet weighed 0.214 gms. and contained 15 mg. of Codiene Phosphate. The petitioner was charged under Sections 21 and 22 of the Act. While quashing the charge, it was held that these tablets could not fall within the ambit of 'manufactured drugs' being excepted in item No. (35) of the Notification No. S.O. 826(E) dated 14-11-1985 issued by the Central Government.

11. Now the question that will arise is 'whether the drugs said to have been recovered from the possession of the petitioner do or do not answer the definition of narcotic drug or psychotropic substance and if they answer the definition of manufactured drug, whether they are excepted in view of Notification No. S.O. 826(E) dated 14-11-1985 issued by the Central Government?

12. As regards item Nos. 1 and 2 i.e. Lomotil tablets, they were manufactured by Searle India Ltd., Ankleshwar under manufacturing licence No. MLG/599. As regards item No. 3 i.e. Norphin injections they were manufactured by Unichem Laboratories Ltd., Bombay under manufacturing Licence No. G-995 A. As regards item No. 5 i.e. Proxy 'N' Capsules, they were manufactured by Wochkhardt Limited, Aurangabad under manufacturing Licence No. 71/1.

13. In Narjit Kumar alias Bittu v. State of Punjab CrI. Misc. No. 526 M of 1996, His Lordship Hon'ble Mr. Justice S. C. Malhe of this Court held that tablets known by trade name Lomotil and manufactured by Searl India Limited is not a substance which NDPS Act is applicable. Lomotil tablet was known to contain 2.52 mg. of Diphenoxylate Hydrochloride per tablet and 0.02 per tablet of Atropine Sulphate and as such these tablets fall within the excepted category. Notification No. S.O. 826 (E) has declared 88 narcotic substances and preparations as manufactured drugs. The substance/preparation mentioned at Sr No. 35 of this notification reads as under:-

(35) Methyl Morphine (commonly known as Codeine) and Ethyl Morphine and their salts (including Dionine), all dilutions and preparations, except those which are compounded' with one or more other ingredients and containing not more than 100 miligrammes of the drug/per dosage unit and with concentration of not more than 2.5% in undivided preparations and which have been established in therapeutic practice.

14. In exercise of the powers conferred by Sub-section (1) of Section 52-A of the NDPS Act, the Central Government has specified the following narcotic drugs and psychotropic substances, namely :-

1. Narcotic Drugs :

(i) Opium

(ii) Morphine

(iii) Heroin

(iv) Ganja

(v) Hashish

(vi) Codeine

(vii) Thebaine

(viii) Cocaine

(ix) Poppy straw; and

(x) any other manufactured drug as defined under Clause (xi) of Section 2 of the Act.

2. Psychotropic Substances :-

(i) Methaqualone

(ii) T.H.C.

(iii) Amphetamine; and

(iv) any other psychotropic substances as defined under Clause (xxiii) of Section 2 of the said Act.

15. It is clear from perusal of this description that a preparation containing not more than 100 miligrams of drug/Codeine/per dosage unit and with concentration of not more than 2.567r in undivided preparation and preparations which have been established in therapeutic practice.

16. As regards item No. 5 i.e. Proxy 'N' capsules, Dextropropoxyphene Hydrochloride a verage 70 mg. per capsule was found and Paracetamol average

400 mg. per capsule was found. Clause 87 of the Notification No. S.O. 826(E) dated 14-11-1985 reads as under :-

(87) (+) -4 -dimethylamino-1, 2-diphenyl 1-(3-methyl-2 Butanol propionate), (the international non-proprietary name of which is Dextropropoxyphene), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations) for oral use containing not more than 135 milligrammes of Dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations provided that such preparations do not contain any substances controlled under the convention on Psychotropic Substances, 1971.

17. From a perusal of this clause, it is evident that the presence of 135 mg. of Dextropropoxyphene hydrochloride base per unit is excepted from the ambit of manufactured drugs for the purpose of this Act provided the preparation does not contain any substance controlled under the convention of Psychotropic Substances, 1971. This substance does not fall in any of the 4 schedules annexed to the convention of Psychotropic Substances, 1971. The presence of Dextropropoxyphene in this substance is within the permissible limits i.e. 70 mg. per capsule. As regards item No. 1 i.e. Lomotel tablets, the Forensic Science Laboratory found Diphenoxylate hydrochloride average 2.52 mg. per tablet and Atropine Sulphate was found average 0.02 mg. per tablet. In *Surinder Kumar v. State of Punjab* (1992) XIX Cr LT 33 (supra), this Court relying upon Notification No. S.O. 826(E) (ibid) found that tablets each containing only 15 mgs. of Codeine have been saved by this notification and the recovered tablets cannot be considered to fall in the definition of Opium as contained in the NDPS Act.

18. None of the drugs containing contraband in excess of permissible limit was found and therefore, no offence under Sections 21 and 22 of the Act, 1985 could be said to have been made out.

19. Phensedyl liquid contained Codeine Sulphate within the permissible limits, hence it falls within the excepted category.

20. As regards the plea that the preparation in question is being widely used for intoxication purposes, this fact in itself is not enough for the prosecution of the petitioner. It has to be borne in mind that the Act applies to certain narcotic drugs and psychotropic substances and not to all kinds of intoxicating substances. It may be stated that all penal statutes ought to be construed strictly, that is to say, that the Court must say that the thing charged as an offence is within the plain meaning of the words used and must not strain the words so as to bring it within the mischief of the statute. Maxwell on Interpretation of Statutes, 12th Edition at page 239 says, the strict construction of penal statutes seems to manifest itself in four ways in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.

21. For the reasons given above, none of the drugs alleged to have been seized from the possession of the petitioner falls within the mischief of 'Narcotic Drugs and Psychotropic Substance' as defined in the Act. They are 'drugs or medicines' as defined in the [Drugs and Cosmetics Act, 1940](#). If at all there is contravention by the petitioner that may be of the provisions of [Drugs and Cosmetics Act, 1940](#) for which complaint lies by the Drugs Inspector to the Court and not FIR and not prosecution by the police. So, this Criminal Misc. Petition is allowed and FIR No. 59 dated 18-7-1996 of Police Station, Sirhind under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and consequential proceedings having arisen therefrom, are quashed.