

Deep Kumar and ors. Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Mar-10-1997

Reported in : 1997CriLJ3104

Judge : P.K. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 21 and 22; Narcotic Drugs and Psychotropic Substances Rules, 1985 - Rules 64 to 66; Drugs and Cosmetics Rules, 1945

Appeal No. : Criminal Misc. No. 4382-M of 1994

Appellant : Deep Kumar and ors.

Respondent : State of Punjab

Advocate for Def. : Rajesh Girdhar, AAG

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

Disposition : Petition allowed

Judgement :

ORDER

P.K. Jain, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) for quashing F.I.R. No. 5 dated 6-1-1994, registered at Police Station, Moga, for an offence under Section 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as the Narcotic Act).

2. The facts necessary for the disposal of this petition are that the petitioners are partners in Firm M/s. Goyal Sales Corporation and are carrying on the business of chemist and druggists at Court Road, Moga, having Drug Licence No. DL-20-B-787600 Nos. 21-B 764800 valid upto 31-12-1993, having applied for renewal vide Challan No. 1255573, dated 25-1-1994 (Annexure P. 1). They have also Sales Tax and Central Sales Tax No. 15 80908411 15 80908411 , dated 19-12-1991 (Annexure P.2). They are authorised stockists of a number of companies dealing in wholesale medicines having huge stocks to be supplied to the retailers for further sale to the consumers vide Annexure P.2.

3. On 6-1-1994, Inspector Jasbir Singh, along with his companion, after getting secret information, raided certain premises and recovered certain drugs and injection ampules from a room alleged to be in the occupation of one Tarsem Lal son of Babu Ram. Samples were drawn from every lot of drugs and injections and the same were converted into 19 sealed packets. A case under Section 21 of the Narcotic Act was registered against the petitioners. The sample parcels were sent to the Forensic Science Laboratory, Punjab, Chandigarh, and the report dated 29-3-1994 has been received.

4. The petitioners have challenged the registration of the case in the present petition on the ground that none of the drugs or injections seized from the possession of the petitioners falls within the category of either Narcotic Drugs or Psychotropic Substances punishable under the Narcotic Act, but falls under the excepted category or is/are covered by the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Drugs Act') for which they possess a valid licence.

5. In their return, the respondents have denied their knowledge if the petitioners are licensed Chemists under the Act. It has been stated that the contraband articles were recovered and were seized in accordance with law, that the

petitioners are not authorised to keep the recovered medicines, that the recovered articles were stored at an unauthorised place owned by one Tarsem Lal and in any case the petitioners are liable to be prosecuted.

6. Along with their return, the respondents have filed F.S.L. report dated 29-3-1994 (Annexure R. 1).

7. I have heard the learned counsel for the parties and have perused the record. The seized articles, as contained in 19 parcels, described in the FSL report (Annexure R. 1) can be enumerated as under: --

- 1) Binorfin injections.
- 2) Deprovon-N Capsules.
- 3) Capapose capsules.
- 4) Lomotil Tablets.
- 5) Diazepam tablets.
- 6) Norphin injections.
- 7) Buta Proxyvon Capsules.
- 8) Proxyvon Capsules.
- 9) Dionindon Tablets.
- 10) Cavisoma Tablets.
- 11) Codeine Sulphate Tablets.
- 12) Subhimol Tablets.
- 13) Phensedyl Liquid.
- 14) Proxyphen-N Capsules.

15) Dextrovon Capsules.

16) Sudhinol Tablets.

17) Phensedyl Liquid.

18) Fortwin Injections and

19) Codeine Sulphate.

The question for decision is as to whether any of the above drugs or substances fall within the definition of 'manufactured drug' or 'psychotropic substance' made punishable under the Narcotic Act. If any of these drugs or substances does not fall within the ambit of the said two expressions, or is excepted by the Act or any rule framed thereunder or any notification or order issued thereunder, no prosecution can be launched therefore under the Narcotic Act. It may be clarified that if there is any breach or violation of any provision of the Drugs Act or the Rules made thereunder, a police officer has got no power to seize any such drug or injection, nor he has got any power to register a case and to investigate the same. It is only a Drug Inspector, as defined in the said Act, who can inspect the premises, seize the drugs and to initiate prosecution by filing a complaint.

8. Section 21 of the Narcotic Act provides for punishment for contravention in relation to manufactured drugs and preparations. The term 'manufactured drug' has been defined by Section 2(xi) to mean inter alia a narcotic substance or preparation which the Central Government may by notification in the official Gazette declare to be a manufactured drug. In exercise of the powers conferred by Sub-clause (b) of Clause (xi) of Section 2 of the Act, the Central Government has declared certain narcotic substances and preparations mentioned in the Notification No. S.O. 826 (E) dated 14-11 -1985, to be manufactured drugs. The substance/preparation mentioned at Sr. No. 35 of this Notification reads as under-

Methly 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 ingredients and containing not more than 100 miligrams of the drug/per dosage unit and with concentration of not more than 2.5

per cent in undivided preparations and which have been established in therapeutic practice.

From a bare perusal of the above description, a preparation containing not more than 100 mg. of drug Codeine/per dosage unit and with concentration of not more than 2.5 per cent in undivided preparation and which has been established in therapeutic practice, it is excepted from the ambit of Section 21 of the Act.

9. In the case in hand, parcel No. 9 relates to the seized drug known as Dionindon tablets. The weight of each tablet has been found to be 105 mg. and each tablet has been found to contain 16 mg. of Ethyl Morphine Hydrochloride. In other words, it does not contain more than 100 mg. of the drug per dosage unit. Similarly, parcel No. 11 relates to the seized drug 'Codeine Sulphate.' The weight of one tablet has been found to be 100 mg. and each tablet has been found to contain 18 mg. of Codeine Sulphate. In other words, it also does not fall within the ambit of manufactured drugs. Parcel No. 13 relates to Phensedyl liquid which is commonly known as cough syrup. It has been found that each 5 ml. of liquid contained 9 mg. of Codeine, again which is within the permissible limit of 100 mg. per dosage unit. Identical is the case relating to parcel No. 17 which also contained Phensedyl liquid containing the same strength of Codeine Phosphate. Parcel No. 19 containing Codeine Sulphate also falls within this excepted category since it has been found that each tablet contains 16 mg. of codeine sulphate.

10. Coming to parcels Nos. 2, 7, 8, 12, 14, 15 and 16, the contents thereof were Deproton-N, Buta Proxylon, Proxylon. Subhimol, Proxylon-N Dextroton and Sudhinol. Each of these drugs, inter alia, contained Dextropropoxyphene Hydrochloride weighing 30 mg., 34.5 mg., 65 mg., 65 mg., 32 mg., 36 mg., and 65 mg. Clause 87 of the notification No. So 826 (E) dated 14-11-1985 (Supra) reads as under :-

(87) (+) - 4 dimethylamino -1, 2- diphenyl - 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.

From a perusal of this clause, it is evident that the presence of 135 mg. of Dextropropoxyphene base per dosage unit is excepted from the ambit of the 'manufactured drugs' for the purposes of this Act provided the preparation does not contain any substance controlled under the Convention on Psychotropic Substances, 1971. None of the 7 substances falls in any of the 4 Schedules annexed to the Convention on Psychotropic Substances, 1971. The presence of Dextropropoxyphene per dosage unit in all the seven substances is within the permissible limit i.e. 135 mg. Therefore, all the 7 substances fall within the excepted category of the 'manufactured drugs.'

11. As regards parcels Nos. 3, 5 and 10, the same contained Capapose, each capsule containing 6 mg. of Diazepam, Diazepam tablets, each containing 5 mg. of Diazepam and Cavisoma tablets, each containing 6 mg. of Diazepam respectively. Parcel No. 18 was found to contain Fortwin injections, each containing 32 mg. of pentazocine. The substances Diazepam and pentazocine do not fall in Schedule 1 annexed to the Narcotic Drugs and Psychotropic Substances Rules, 1985. In view of Rules 64 to 66, manufacturing, possession, sale, purchase, consumption or use of any of these substances are governed by the Drugs Act and the Rules made thereunder. The substances Diazepam and Pantazocine are contained in Schedule 'H' annexed to the 'Drugs and Cosmetics Rules, 1945' framed under the Drugs Act. It has not been disputed during arguments at the Bar that the petitioners possess a valid Drug Licence for the storage, sale and purchase etc. of the various drugs including the said substances. Therefore, the substances contained in these parcels are not covered by the Narcotic Act and the petitioners cannot be prosecuted for the possession thereof in view of the Drug Licence held by them.

12. Parcel No. 4 was found to contain Lomotil tablets. 'Lomotil' consists of 2.5 mg. of Disphenoxylate hydrochloride and 0.025 of; Atropine Sulphate as ingredients, which are not covered by the Narcotic Act. The possession or any transaction in

the said substance is not an offence under the Narcotic Act as held by a Single Bench of this Court in Crl. Misc. No. 526-M of 1996(Narjit Kumar alias Bittu v. State of Punjab), decided on 6-2-1996.

13. Now we are left with parcels Nos. 1 and 6 which were found to contain Binorfin and Norphen injections. On an analysis, each injection in parcel No. 1 was found to contain 0.32 mg. of Buprenorphine. The contents of parcel No. 6, on analysis, were found to contain 0.3 mg. of Buprenorphine. This psychotropic substance does not fall within the ambit of Schedule I annexed to the Narcotic Drugs and Psychotropic Substances Rules, 1985, but is found to contain in Schedule III thereof. This substance, being not covered by Schedule I of the Rules, shall be governed by the Drugs Act and the Rules framed thereunder. The quantity of Buprenorphine has been found within the permissible limit and the petitioners were possessed with a valid Drug Licence to keep and dispense such injections. Therefore, it cannot be said that the possession of Binorfin and Norphen injections was contravention of Section 22 of the Narcotic Act.

14. From the above discussion, it becomes evident that the possession of any of the 19 drugs/ substances by the petitioners does not violate any of the provisions of Narcotic Act punishable under Section 21 or 22 thereof.

15. Before parting with this judgment, it is necessary to say that Section 2 of the Narcotic Act defines several substances and drugs. There are several schedules annexed to the Narcotic Act and the Rules framed thereunder, as well as to the Drugs Act and the Rules framed there under. Many a times, it is not possible for the police and the Courts to bring the seized item under a particular definition even when the said item is analysed by a Chemical Analyser and named. The obvious reason is that the trade name, known proprietary name and chemical name of a drug or substance are sometimes confusing. It is the ardent desire of this Court that it would be advisable if the Chemical Analyser on analysing a particular drug or substance spell out as to under what definition of Section 2 of the Narcotic Act or under which head of the Schedule annexed thereto or to the Rules framed thereunder the drug or the substance falls so that the Courts may be able to appreciate contravention or violation of the Narcotic Act or the Rules framed

thereunder in a proper manner, although omission on the part of the Chemical Analyser to do so does not affect the prosecution case. It is merely to facilitate the work of the implementing agency as well as the Courts.

16. As a result of the above discussion, I hold that admitting all the allegations contained in the first information report to be correct, no offence under Section 21 or 22 of the Narcotic Act or the Rules framed thereunder is made out against the petitioners. If the petitioners have contravened any provisions of the Drugs Act or the Rules framed thereunder, it is for the Drugs Inspector to initiate the action against the petitioners in accordance with the provisions of that Act.

17. As a result, this petition is allowed. First Information Report No. 5 dated 6-1-1994, registered at Police Station, Moga. for an offence under Section 21 of the Narcotic Act is hereby quashed.

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