

Mohd. Sayed Vs. Customs

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Court : Delhi

Decided On : Jul-12-2002

Reported in : 2003(1)ALT(Cri)7; 99(2002)DLT305; 2002(64)DRJ188; 2002(83)ECC294

Judge : K.S. Gupta, J.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 2, 22, 23, 27, 27(2) and 28

Appeal No. : Crl. Rev. No. 120/2002

Appellant : Mohd. Sayed

Respondent : Customs

Advocate for Def. : Sunil K. Sharma, Adv.

Advocate for Pet/Ap. : Harjinder Singh, Adv

Disposition : Revision petition allowed

Judgement :

K.S. Gupta, J.

1. In this revision petition the petitioner-accused seeks setting aside of the order dated 5th February 2002 passed by a Special Judge, NDPS, New Delhi.

2. In the complaint filed under Sections 22(c), 23 and 28 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') by the Customs, the petitioner is alleged to have been found in possession of 3215 Tidigesic Inj. Buprenorphine of 2 ml each on 4th July 2001. In terms of order under challenge the charge under said Section 22(c) was ordered to be framed against the petitioner for possessing 4630 mls Buprenorphine being the total quantity of recovered 3215 ampoules. Out of recovered ampoules, 5 were sent to CRCL, New Delhi for analysis. Copy of the report dated 14th January 2002 at pages 15 and 16 on the file, would reveal that 0.09 ml Buprenorphine per ml was found in the sample ampoules. Having heard Sh. Harjinder Singh for petitioner and Sh. Sunil Sharma for respondent the point which arises for consideration is whether actual quantity of Buprenorphine as found present in the recovered ampoules i.e. 0.578 mls or the total quantity of contents of these ampoules being 6430 mls, is to be taken for framing of charge against the petitioner. In supersession of Notification No. SO 527(E) dated 16th July 1996, Notification No. S.O. 1055(E) dated 19th October 2001 was issued by the Ministry of Finance (Department of Revenue) specifying 'small' and 'commercial' quantities of narcotic and psychotropic substances. In terms of Entry at Sl. No.169 therein small quantity of Buprenorphine has been specified as 1 gram while commercial quantity thereof as 20 grams. Clause (xv) of Section 2 of Act defines 'opium' while Clause (xvi) 'opium derivative'. Sub-clause (a) of Clause (xvi) which is material, provides as under:-

"opium derivative' means - (a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials.'

3. 'Manufactured drug' has been defined in Clause (xi). As per Sub-clause (a) thereof same includes all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate. Buprenorphine is stated to be derived from opium alkaloid and, thus, it being a opium derivative within the meaning of Clause (xvi)(a) is a manufactured drug as defined in said Sub-clause (a) of Clause (xi) of Section 2 of the Act. Possession of manufactured drugs has been made punishable under

Section 21 of the Act. By virtue of definition given in Clause (xiv) of Section 2 'narcotic drug' also includes manufactured drug. Possession of small quantity of narcotic drug for personal consumption has been made punishable with a lesser punishment under Section 27 of the Act. Sub-section (2) of Section 27 mandates that where a person is shown to have been in possession of a small quantity of narcotic drug or psychotropic substance the burden of proving that it was intended for personal consumption of such person and not for sale or distribution shall lie on such person. In my view, in this case, it could only be the actual quantity/value of Buprenorphine as found present in each ampoule i.e. 0.18 ml and not the total quantity of 2 ml that may be taken for the purposes of framing of charge against the petitioner. So calculated, the aggregate Buprenorphine in 3215 ampoules would come to 0.578 gm which is a small quantity. Decision in *Munna Devi v. State of Rajasthan & Anr.* , 2002 (1) Cri 145 relied on behalf of respondent has no applicability to the issue in hand. Thus, the impugned order being legally erroneous deserves to be set aside in so far as it pertains to framing of charge taking the quantity of Buprenorphine as 6430 mls.

4. Consequently, while allowing revision petition, order dated 5th February 2002 is set aside to the extent noticed in the preceding para. Special Judge seized of the case after modifying the charge will proceed to decide the matter in accordance with law.

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