

Jagdish Chandra Vs. State

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Court : Rajasthan Jodhpur

Decided On : Dec-04-2012

Appellant : Jagdish Chandra

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER Jagdish Chandra vs. The State of Raj. S.B. Criminal Revision Petition No. 168/2010 under Section 397 read with Section 401 Cr.P.C. against the order dated 28.1.2010 passed by learned Special Judge, NDPS Act Cases, Sri Ganganagar in Criminal Case No. 26/2009. Date of Order :

4. 12.2012 PRESENT HON'BLE MRS. NISHA GUPTA, J.

Mr. Vineet Jain for the petitioner. Mr. Anil Upadhyay, Public Prosecutor for the State. BY THE COURT: This revision petition has been filed against the order dated 28.1.2010 passed by learned Special Judge, NDPS Act Cases, Sri Ganganagar whereby charge has been framed for the offence under Sections 8/21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the N.D.P.S. Act). The short facts of the case are that the petitioner is a licenced-dealer of medicines under the provisions of Drugs and Cosmetics Act, 1940 and running a business in the name of M/s J.S. Distributors at Sri Ganganagar. Some medicines were purchased under valid bills and were received by the petitioner which were placed in his house and while they were shifting it 2 to his place of business, the S.H.O., Police Station Jawahar Nagar has seized the same and

registered an FIR No. 313/2009 for the offences under Section 8/21 and 22 of the N.D.P.S. Act. After investigation, charge-sheet has been filed against the present petitioner and the learned trial court has framed the charge against the present petitioner. Hence this revision. The contention of the present petitioner is that medicines which have been recovered from the present petitioner are not covered under the N.D.P.S. Act as the constituent of these medicines are within the limit prescribed under the scheduled appended to N.D.P.S. Act and hence no charge under Sections 8/21 and 22 of the N.D.P.S. could be framed against the present petitioner. Per contra, the contention of the learned Public Prosecutor is that there is no infirmity in the above order. The only contention of the present petitioner is that recovered articles are medicinal tablets and covered under the Notification SO 826(E) dated 14.11.1985 and S.O. 40(E) dated 29.1.1993 and it has to be shown that the quantity of the prescribed drug in a single dose/unit was in excess of the permissible limit as prescribed under the Notification and, admittedly, none of the seized tablet contained drug in excess 3 of the permissible limit. Hence the charges could not be framed against the present petitioner. The petitioner has placed reliance on *Jawahar Lal v. State of Rajasthan* (2012(1) Cr.L.R.(Raj.)

341) and Criminal Misc. Petition No. 9771-M/1997 (*Rajeev Kumar v. State of Punjab*) decided on 7.10.2997 by the Punjab and Haryana High Court. Heard learned counsel for the petitioner and the learned Public Prosecutor for the State and perused the connected record. It is not in dispute that medicines, namely, Rexcof Syrup, Dezvon Capsules, Parvon Spas Capsules, Spasmoproxyvon Capsules, Parvon Forte Capsules and Proxyvon Capsules have been recovered from the possession of the present petitioner and the composition of the medicines has also not been disputed and this is not the case of the prosecution that the constituent of these medicines are not within the limit prescribed under the N.D.P.S. Act for a single unit. According to the Notification, the maximum limit per dose/unit has been prescribed and, admittedly, the seized tablets contained drug only of the permissible limit. Hence looking at the above and in the light of the law laid down by this Court and relying upon the principle laid down by 4 the Punjab and Haryana High Court, the seized medicines contained the drug below the prescribed limit and when the limit as prescribed under the Notification has not been exceeded in the recovered medicines, no offence under Sections 8/21 and

22 of the N.D.P.S. Act is made out and this revision petition deserves to be allowed. In view of the above, this revision petition is allowed and the petitioner is discharged from the offence under Section 8/21 and 22 of the N.D.P.S. Act. In view of the order passed in the main revision petition, the stay petition stands disposed of automatically. (NISHA GUPTA),J.

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