
(1996) 04 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4233-M of 1995

Lovely Medicose, Kot Kapura

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Citation : (1996) 2 RCR(Criminal) 679

Hon'ble Judges : V.K.Jhanji, J

Advocate : S.K. Bhanot, Rameshwar Puri, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. This petition under Section 482 Cr.P.C. is for quashing the proceedings initiated against the petitioner under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 1985 Act) read with Section 18 of the Drugs and Cosmetics Act, 1940 (for short the 1940 Act) and the subsequent proceedings thereon.

2. F.I.R. No. 4 dated 24.1.1995, P.S. City Kotkapura was registered against the petitioner on the allegation that Naranjan Kumar son of Hari Chand has stored a large quantity of drugsnarcotics without permit in his residential house and in another room owned by Ram Chand but on rent with the petitioner. Further, it was alleged that in case a raid is conducted, large quantity of drugs and narcotics can be recovered from his possession. On this information, the residential premises of the petitioner and the room on rent with him were raided and the medicines detailed in Annexure P2 to the petition were recovered.

3. Learned counsel for the petitioner has contended that even accepting the case of the prosecution in toto, no case under the 1985 Act has been made out as the tablets of Ethyl Morphine commonly known as Codiene including Dionine recovered from the petitioner do not fall within the definition of Narcotic because the quantity of Dionine per dosage unit was within the prescribed limit. Mr. Puri, learned counsel for the petitioner has drawn my attention to Annexure R1, the

report of the Forensic Science Laboratory, Punjab, Chandigarh. At page 35 of the report, it finds mention that from the analysis of Dionindon tablets, the quantity of Ethyl Morphine was found 15 mg. per tablet. Mr. Puri on the basis of report of the Forensic Science Laboratory has contended that the case of the petitioner is squarely covered by the decisions of this Court in Surinder Kumar v. State of Punjab, 1992(2) Recent Criminal Reports 241 : 1992(XIX) Cr. L.T. 33 , and Criminal Misc. No. 4548M of 1994 (Deep Chand v. State of Punjab) decided on 2.12.1994.

4. F.I.R. No. 4 dated 24.1.1995 has been registered against the petitioner under Sections 21 and 22 of the 1985 Act and Section 18 of the 1940 Act. Section 21 of 1985 Act provides for punishment for contravention in relation to manufactured drugs and preparations, whereas Section 22 provides for punishment in relation to Psychotropic Substances. Relevant in the case of the petitioner is Section 21 which reads as under :

"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 interState, exports interState 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".

It is apparent from a reading of Section 21 that it provides for punishment for contravention in relation to manufactured drugs and preparations. According to clause (xi) of Section 2, the expression "Manufactured drugs" means :

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government 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 Government 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 not to be a manufactured drug. The Central Government in view of the powers by subclause (b) of clause (xi) of Section 2 of the 1985 Act has initially declared 88 drugs to be "manufactured drugs" vide notification No. S.O. 826(E) dated 14.11.1985. By another notification No. GSR 40(E) dated

29.1.1993, the Central Government has declared 17 more substances and preparations to be "manufactured drugs" for the purposes of Section 2(xi)(b) and Section 21 of the Act. The relevant part of notification dated 14.11.1985 is as under :

"S.O. 820(E), In exercise of the powers conferred by subclause (b) of clause (xi) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby declares the following Narcotic substances and preparations to be manufactured drugs, namely :

(1)

(35) Methyl Morphine (commonly known as "Codiene") 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 milligrams of the drugs/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".

Out of the drugs/medicines recovered from the petitioner, parcels No. 23 and 24 contained Dionindon tablets. On Chemical examination, Dionindon tablets in parcels No. 23 and 24 were found to contain Ethyl Morphine to the extent of 15 mg. and 15.1 mg. each tablet. Since each tablet contained about 15 mg. of Ethyl Morphine, the recovered drugs cannot fall within the definition of "opium" as contained in the Act. In Surinder Kumar's case (supra) intoxicant tablets were recovered from the chemist shop of the petitioner therein. According to the report of the Forensic Science Laboratory, each tablet weighted 0.214 grams and contained 15 mg. of Codiene phosphate. Petitioner therein was charged under Sections 21 and 22 of the Act. Therein, while quashing the charges, it was held that these tablets could not fall within the ambit of "manufactured drugs" being excepted in item No. (35) of notification dated 14.11.1985. A similar view was taken in Deep Chand's case (supra). Accordingly, the case of the petitioner being covered by the said two judgments, the tablets of Ethyl Morphine recovered from the petitioner cannot be deemed to have fallen within the definition of "manufactured drugs".

6. It was then contended by the learned counsel for the State that the medicines were recovered from the residential premises of the petitioner and also from the room on rent with him and these premises being not licensed one, the petitioner has violated the provisions of Section 18 of the 1940 Act. This argument too is without any merit. The allegations made in the F.I.R. do prima facie show that the petitioner by storing the medicines in an unauthorised place did violate the provisions of Section 18 of the 1940 Act, but the petitioner could be held liable for the same if the seizure had been made in accordance with Section 23 of the Act. Respondents in para 10 of the written statement have conceded that the Drugs Inspector had not performed his duty under Section 23 of the 1940 Act, meaning thereby that the drugs/medicines were not seized in accordance with

the procedure provided under Section 23 of the Act. In this view of the matter, petitioner cannot be held liable under Section 18 of the 1940 Act.

7. Consequently, this petition is allowed. F.I.R. No. 4 dated 24.1.1995 P.S. City Kotkapura and the subsequent proceedings taken thereon shall stand quashed. The seized medicines are directed to be released to the petitioner forthwith.