

---

**(2008) 02 P&H CK 0260**  
**In the Punjab And Haryana At Chandigarh**

Pargat Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

---

**Date of Decision :** 25-02-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 2, 21, 22, 83

**Citation :** (2008) 02 P&H CK 0260

**Hon'ble Judges :** Kanwaljit Singh Ahluwalia, J

**Bench :** Single Bench

---

## Judgement

Kanwaljit Singh Ahluwalia, J.—Pargat Singh son of Swaran Singh resident of village Dode Kalsian, Tehsil Patti, District Amritsar has filed the present appeal aggrieved against the judgment and order of Additional Sessions Judge, Amritsar, whereby he has been convicted u/s 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter to be referred as "the Act") and has been sentenced to undergo RI for ten years and to pay a fine of Rupees one lac, in default of payment of which to further undergo RI for one year.

2. The present appellant was sought to be prosecuted in case FIR No. 122 dated 25.10.1995 by the police of police station Bhilkhiwind for having been found in possession of 30 injections of morphine, one vial and one syringe.

3. The case set out in the FIR is that SI Resham Singh along with his companion officials was present near Bus Stand Patti in connection with patrol duty, when a secret information is said to have been received that Pargat Singh appellant, who is running a shop near Gurdwara on Patti road, used to administer injections of morphine to young boys and drug addicts. It was further told that the appellant had gone to village Kaleke for administering injections to the addicts and in case naka is laid, a large number of morphine injections could be recovered from him. Accordingly SI Resham Singh laid a naka. After some time a person was found coming with one plastic envelope in his hand. While he was waiting for a bus on

the road, he was apprehended on suspicion. On enquiry he disclosed his name as Pargat Singh. The Investigating Officer offered him to get his personal search conducted in the presence of a gazetted officer or a Magistrate. The appellant opted to be searched in the presence of DSP. Accordingly, SI Resham Singh sent wireless message to DSP Ashok Kumar, who reached the spot at about 3-00 pm. Thereafter search of the appellant was conducted and from the plastic bag, 30 injections of morphine, one vial (in which morphine injections had been injected with syringe) were recovered and the same were taken into possession. After recording the proceedings, the same were sent to the police station, on the basis of which the present FIR was registered.

4. After completion of investigations, report u/s 173 Cr.P.C. was submitted. The appellant was charged u/s 21 of the Act, to which he pleaded not guilty and claimed trial. The prosecution in all has examined four witnesses:

PW1 Resham Singh is the Investigating Officer.

PW2 is Ashok Kumar DSP, in whose presence the recovery was effected.

PW3 is SI Narinder Singh, who was posted as SHO of the concerned police station at the relevant time. He deposed regarding production of case property before him and thereafter he produced the same before the Illaqa Magistrate.

PW4 is Paramjit Singh, who has been examined to prove the link evidence.

5. After the prosecution evidence was closed, statement of the accused u/s 313 Cr.P.C. was recorded, wherein he pleaded innocence and stated that he was falsely implicated. No evidence in defence has been produced by the appellant. I have perused the record and heard Mr. Ajay Sharda, Learned Counsel for the appellant.

6. That two parcels were sent to the Forensic Science Laboratory (FSL), the description of both the parcels is given below:

Parcel No. 1 was found to contain one vial label as Vitamin B- Complex, which contained 23 ml of yellow coloured liquid.

Parcel No. 2 was found to contain 30 unlabelled injections (ampoules). Each ampoule contained 2 ml of colourless liquid.

7. As per the identification and tests the report is as follows:

Parcel No. 1

Morphine : Present Sulphate ion : Present Quantity of Morphine Sulphate : 14.80 mg per ml.

Parcel No. 2

Morphine : Present in each injection Sulphate ion : Present in each injection Quantity of Morphine Sulphate : 19 mg per ml. (average)

8. Mr. Sharda has contended that FSL has not deciphered the quantity of morphine and sulphate separately. He has relied upon a Single Bench judgment of this Court rendered in *Sewak Singh v. State of Punjab* 1998(4) RCR 832 to urge that if Section 2(xxiii) of the Act is read which define "Psychotropic Substance" along with a schedule, which has been added after Section 83, then the present recovery will not fall under "Psychotropic Substances". He has further urged that to attract conviction u/s 18, strength of morphine should be more than 0.2% in each injection as per Section 2(xxiii) of the Act.

9. With respect the following portions from the judgment (*supra*) are reproduced below:

7. Shri P.S. Hundal, Learned Counsel appeal on behalf of the appellant submitted that it is not proved on the record that the appellant was in possession of psychotropic substance within the meaning of the definition of Section 22 read with Section 2 Sub clause (xxiii) of the Act. The counsel submitted that the appellant was charge-sheeted u/s 22 of the Act and the allegations against him were that he was found in possession of psychotropic substance, i.e. 10,000 injections containing morphine. Section 2(xxiii) defines "psychotropic substance" which means any substance, natural or synthetic, or any natural material or any salt or preparation of sub substance or material include in the list of psychotropic substances specified in the Schedule. The Schedule has also been added in the Act after Section 83 thereof, in which list of "psychotropic substances" mentioned for the purposes of Section 2(xxiii). A close reading of this schedule would reveal that nowhere it is mentioned that morphine sulphate would fall within the meaning of the definition of "psychotropic substance". Reverting to the report of the Chemical Examiner (Ex.PB), it would show that the Chemical Examiner in this report has given the following observations by stating that each injection contained Morphine Sulphate 20 mg. Approximately in every mili-litre. Thus it can be said that the incriminating article recovered from the possession of the appellant does not fall within the definition of "psychotropic substance".

8. Now it is to be found whether the appellant can be convicted u/s 18 of the Act, treating that each injection contained Morphine Sulphate 20 ml. Approximate per mililitre. Section 18 of the Act lays down that whoever possesses opium shall be punished under that section. "Opium" has again been defined u/s 2(xv) of the Act, which means:(

a) xx xx xx

(b) any mixture, with or without any natural material, of the coagulated juice of the opium poppy, but does not include any preparation containing no more than 0.2 per cent of morphine;

In order to achieve success u/s 18 of the Act, the prosecution has to establish that the incriminating injections containing morphine, the strength of which was more than 0.2 per cent.

9. Reverting to the report (Ex.PB), again it is not clear nor it is so certified by the Director, Forensic Science Laboratory (Chemical Examiner) that each of the injections contained morphine, the strength of which was more than 0.2 per cent. Only a reference has been made in Ex.PB that each injection contained morphine sulphate 20 mg. Against per milliliter approximately. The salt observed by the Chemical Examiner does not fall within the meaning of opium as defined u/s 2(xv) of the Act. 10. Yet it is to be seen whether the appellant has committed the offence for allegedly found in possession of the Narcotic drugs within the meaning of Section 2 of the Act. "Narcotic Drug". For our purpose "manufactured drug" has been defined in Section 2(xi) which 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.

For our purpose we have to see whether the incriminating article allegedly recovered from the possession of the appellant falls within the definition of "opium derivative" or whether it has been so declared as a "manufactured drug" for the purpose of Section 2(xi)(b). Again the answer of This Court would be that the report (Ex.PB) cannot be helpful to the prosecution because it does not talk about the strength of "morphine", which has to be read independently from "morphine sulphate", which is again an independent compound. Once it is established that the prosecution has not been able to prove the psychotropic substance within the meaning of Section 22 read with Section 2(xxiii) of the Act, the conviction of the appellant cannot be maintained under this Section.

10. As per Section 2(xv), anything containing more than 0.2 per cent of morphine is opium. Section 2(xvi) gives meaning of the opium derivative and is reproduced below:

(xvi) "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;

(b) prepared opium, that is, any product of opium by any series of operations designed to transform opium into an extract suitable for smoking and the dross

or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

11. Chemically, morphine sulphate is 7, 8-didehydro -4, 5-epoxy -17- methyl - morphinan -3, 6 - diol sulphate (2:1) (salt) pentahydrate. Morphine sulphate is a schedule II narcotic under the United States Controlled Substance Act 21 U.S.C. 801. Morphine is the most commonly cited prototype for narcotic substances that possess an addiction-forming or addiction-sustaining liability.

12. Morphine sulphate comes under different brand names like MS Contin, Avinza, Astramorph, Depo Dur, Duramorph, Roxanol, Kadian etc. Avinza is a mu-agonist opioid and is a Schedule II controlled substance. Opioid analgesics can produce drug dependence and has a potential for being abused. Physical dependence may develop upon repeated administration.

13. In *Jefferson v. State* 1926 OK CR, it has been held that the Court will take judicial knowledge that morphine is a derivative of opium and that morphine sulphate is a subdivision of morphine. A charge of the sale of morphine, a derivative of opium, is sustained by proof of the sale of morphine sulphate.

14. Therefore, relevant portion from case of *Jefferson supra* is cited below:

This Court takes judicial notice that morphine is a derivative of opium, and that the two forms in which it comes are morphine hydrochloride and morphine sulphate; that morphine hydrochloride is a chemical combination of morphine and hydrochloric acid, and morphine sulphate is chemical combination of sulphuric acid and morphine.

15. During course of arguments, this Court expressed its reservation regarding law laid in *Sewak Singh v. State of Punjab* 1998 (4) RC 832 and had adjourned the matter to do further research. After the research, counsel was confronted with the material gathered and thereafter another adjournment was sought by the counsel. The counsel has been fair and has reverted back to the Court and has made the following statement:

Morphine is the principal alkaloid of opium. Morphine as base was official in British pharmaceuticals Codex, 1939 along with its acetate salt. It is official in all pharmacopoeias as hydrochloride or sulphate salt. Indian Pharmacopoeia describe both morphine hydrochloride and morphine sulphate. Morphine sulphate is a salt name and morphine is a trade name.

16. This Court appreciate fairness of the counsel. The counsel for the petitioner has stated that he can argue on other questions of law and fact as mandatory

provisions have not been followed, but has further stated that till judgment rendered in Sewak Singh v. State of Punjab (supra) is not over-ruled this Court is bound by ratio of the judgment.

17. This Court is of the considered opinion that in Sewak Singh v. State of Punjab (supra) correct law has not been laid, rather facts have been interpreted to hold that morphine sulphate will not fall under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, thereby in such cases, it can result into large scale acquittal and the same will not be in consonance with the provisions of the law. Therefore, Sewak Singh v. State of Punjab (supra) is required to be reconsidered so that reliance is not placed upon this judgment. On this short question that the morphine sulphate is opium/ opium derivative and anybody carrying such material is liable to be convicted and sentenced under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, this matter is referred to the larger Bench.

18. Matter, be placed before my lord, Hon''ble Chief Justice for his orders.