
(2008) 04 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 139-SB of 1997

Pargat Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2(xi), 2(xi)(b), 2(xv), 2(xvi), 2(xxiii)

Citation : (2008) 04 P&H CK 0004

Hon'ble Judges : S.D. Anand, J; A.K. Goel, J

Bench : Division Bench

Advocate : Ajay Sharda, for the Appellant; A.S. Jattana, A.A.G., Punjab, for the Respondent

Judgement

Adarsh Kumar Goel, J.—This matter has been placed before Division Bench on a reference by learned Single Judge dated 25.2.2008 for reconsideration of an earlier judgment of Single Bench in Sewak Singh v. State of Punjab 1998 (4) RCR (Criminal) 832, wherein it was held that the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") are not attracted in respect of injections containing Morphine Sulphate. Morphine Sulphate injection was not covered by the definition of "psychotropic substances" u/s 2 (xxiii) of the Act. The said substance was also not covered by the definition of "Manufactured Drug" as defined u/s 2 (xi) of the Act, which included opium derivatives.

2. Learned Single Judge observed in the reference order that as per Forensic Science Laboratory report, Morphine Sulphate was found which had average quantity of 19 mg. per ml. and in such a situation, the substance was covered u/s 2 (xvi), the same being opium derivative and, thus, view taken in the earlier Single Bench judgment was erroneous.

3. The relevant observations of the learned Single Judge in the reference order are as under:-

"As per Section 2 (xv), anything containing more than 0.2 per cent of morphine is opium.

4. 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;"

Chemically, morphine sulphate is 7, 8- dihydro -4, 5- epoxy -17- methyl - morphinan -3, 6 - diol sulphate (2: 1) 2 (salt) pentahydrate.

5. Morphine sulphate is a schedule II narcotic under the United States Controlled Substance Act (21 U.S.C. 801-886). Morphine is the most commonly cited prototype for narcotic substances that possess an addiction-forming or addiction-sustaining liability.

6. 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.

7. In *Jefferson v. State* 1926 OK CR, it has been held that the Court will take judicial knowledge (notice) 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.

8. 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." During course of arguments, this Court expressed its reservation regarding law laid in *Sewak Singh v. State of Punjab* 1998 (4) RCR (Cri) 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."

9. We have heard learned counsel for the parties.

10. We agree with the view taken by the learned Single Judge that morphine is principal alkaloid of opium. Morphine sulphate is not a separate compound but a sub division of morphine and is, thus, not outside the provision of Section 2(xi) of the Act, the same being opium derivative. The view taken in the earlier judgment in *Sewak Singh's* case (supra) that morphine has to be read independently from Morphine Sulphate is without any legal basis. The same cannot be sustained. Learned counsel for accused has rightly accepted this position to be correct. The observations in *Sewak Singh's* case (supra) are reproduced below for ready reference:-

"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."

12. The above observations that Morphine has to be read independently from Morphine Sulphate do not refer to any relevant literature. Even learned counsel for the accused is unable to support the said observation. In the referring order, the learned single Bench has referred to judgment in *Jefferson's* case (supra), holding that Morphine Sulphate is a sub division of Morphine and is, thus, derivative of opium.

13. Accordingly, we overrule the view taken in *Sewak Singh's* case (Supra) and hold that possession of Morphine Sulphate will attract the provisions of the NDPS Act.

14. Having answered the question referred for consideration, the matter is

referred back to the learned Single Judge for being decided on merits.