

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision No. 388 of 1993
Date of Decision: 31.7.2007

The State of Punjab.

..... Petitioner through Shri
Mehardeep Singh, Assistant
Advocate General, Punjab.

Versus

Ashok Kumar.

..... Respondent through Shri
D.D.Sharma, Advocate.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Mahesh Grover,J.

In this revision petition filed under Section 401 of the Code of Criminal Procedure,1973, the State of Punjab has assailed order dated 13.1.1993 of the Additional Sessions Judge, Barnala vide which the respondent was discharged for the offence of having in his illegal possession two containers of 980 tablets and 392 tablets on which the words 'carewell' and 'Kuemen' were inscribed, respectively.

On 2.4.1991, the police, on a secret information, intercepted the

respondent while allegedly selling intoxicating tablets at his shop. From his possession, three containers of tablets were recovered. One container had 980 tables of white colour with inscription of 'carewell', whereas the second had 392 tablets with the word 'Kuemen' inscribed on them. The third one was containing 220 tables of brown colour. The samples were taken from each container and were got tested from the Forensic Science Laboratory, Punjab. The tablets with inscription of 'Kuemen' and 'carewell' were found containing codeine phosphate to the extent of 7% and 7.1% respectively, whereas the tablets of brown colour were having morphine to the extent of 1.06%.

The respondent was accordingly sent up to face trial for having committed the offence punishable under Sections 21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

Vide the impugned order, the trial Court found that no offence was made out against the respondent so far as the charge of having in his possession 980 tables and 392 tables was concerned as 7% and 7.1% codeine found in them was within the prescribed limit and did not exceed the requirement as stipulated in Clause 35 of Notification No.13/85, dated 14.11.1985 issued by the Government of India vide F.No.664/57/85-opium in exercise of the powers conferred under Section 2 of the Act. The relevant observations of the trial Court are as under:-

“In this case, the percentage of the codeine being 7% and 7.1%, the average weight per tablet being 0.710 grams and 0.620 grams respectively, the contents of codeine phosphate per tablet work out to less than 50 Mgs.”

The respondent was accordingly discharged of the said offence. However, he was charge sheeted for having in his illegal possession 220 tablets containing morphine.

It may be mentioned here that the respondent has since been acquitted of the said charge by the Additional Sessions Judge, Barnala vide judgment dated 6.2.1995.

Learned counsel for the petitioner contended that the trial Court had wrongly discharged the respondent from the charge of having in his illegal possession two packets containing 980 tablets and 392 tablets with codeine and, therefore, the impugned order deserves to be set aside in so far as it relates to that aspect.

On the other hand, learned counsel for the respondent contended that the discharge of the respondent was perfectly justified and the impugned order does not require any interference. In support of his contention, he relied upon the judgments reported as Surinder Kumar Versus The State of Punjab, 1992(2) R.C.R. (Criminal) 241; Deep Kumar versus State of Punjab, 1997(2) R.C.R. (Criminal) 417; Tejinder Singh @ Monto Versus State of Punjab, 1997(3) R.C.R. (Criminal) 646; Rajeev Kumar Versus State of Punjab, 1997(4) R.C.R. (Criminal) 846; Ajit Kumar Versus State of Punjab, 2003(2) All India Criminal Law Reporter 646 and Gurdarshan Pal Versus State of Punjab, 2003(2) All India Criminal Law Reporter 653.

Having thoughtfully considered the rival contentions, I am of the considered view that there is no infirmity in the impugned order as the petitioner has miserably failed to establish that the tablets in question which

were recovered from the respondents were not 'manufactured drugs'. Besides, the contents of codeine found were in permissible limit and in conformity with the instructions dated 14.11.1985, the relevant portion of which is reproduced below:-

“(35) Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations, except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice.”

In my opinion, the law laid down in the judgments relied upon by the learned counsel for the respondent is squarely applicable to the facts of the present case.

Hence, the revision petition is dismissed.

July 31,2007
“SCM”

(Mahesh Grover)
Judge