

CASE NO.:
Appeal (crl.) 1022 of 1997

PETITIONER:
Sajan Abraham

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 26/02/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
J U D G M E N T

B.P. Singh, J.

The appellant herein was charged of having committed the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and was put up for trial before the Ist Additional Sessions Court, Ernakulam. The case of the prosecution was that on 10th October, 1993 at about 7.45 p.m. he was found in possession of 25 ampoules of manufactured drug, namely \026 Buprenorphine Hydrocholride (Tidigesic) alongwith three syringes when he was apprehended on the road near Blue Tronics Junction, Palluruthy. The learned Additional Sessions Judge by his judgment and order dated 5th March, 1994 acquitted the appellant of the charge levelled against him. On appeal by the State being Criminal Appeal No. 533 of 1994 the acquittal of the appellant was set aside and the appeal preferred by the State was allowed. The appellant was found guilty of the offence punishable under Section 21 of the NDPS Act and was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of rupees one lakh, in default to undergo simple imprisonment for one year.

The appellant preferred an appeal before this Court being Criminal Appeal No. 1022 of 1997 but the same was dismissed by this Court by judgment and order dated 7th August, 2001. The appellant then filed a review petition being Review Petition (Crl.) No.1236 of 2001 which was allowed by this Court and the appeal restored to its original number. The appeal has now been placed before us for disposal.

While allowing the review petition this Court observed that the appellant should have taken up a plea in the light of the decision of this Court in Hussain vs. State of Kerala : (2000) 8 SCC 139 in which the same article Buprenorphine Hydrocholride (Tidigesic) was found to be a psychotropic substance and the quantity which was found in possession of the accused was within the prescribed limit, being a small quantity. Consequently benefit of the same was granted to the accused in that case and he was acquitted. This Court felt, while allowing the review petition, that the appellant should be permitted to take up that contention in this case in order to prevent a miscarriage of justice. This Court noticed that the total quantity involved is 25 ampoules of Buprenorphine Hydrocholride (Titidigesic) of 2 ml. each. Counsel for the State of Kerala submitted that the limit of small quantity as per the

Notification is 1 gm. Thus the total quantity seized from the appellant would fall within the limit of small quantity used for medicinal purposes. The appellant was permitted to file a petition seeking permission to raise additional grounds in the appeal.

An application has been filed by the appellant for permission to urge additional grounds in his appeal. We allow the said application.

It was not disputed before us by the learned counsel appearing on behalf of the State that the total quantity seized from the appellant would fall within the limit prescribed under Section 27 of small quantity to be used for medicinal purpose, namely 1 gm. It is also not contended that the quantity seized from the appellant was in excess of the quantity prescribed under Rule 66.

Section 21 of the NDPS Act, as it stood at the relevant time provided as follows :-

"21. Punishment for contravention in relation to manufactured drugs and preparations. \026 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 inter State, exports inter-State 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 thus apparent that what is made punishable under Section 21 is, - possession, sale, purchase etc. of the drugs and preparations mentioned therein in contravention of any provision of the Act or any rule or order made or condition of licence granted thereunder. Obviously, therefore, if any rule permits a person to possess any psychotropic substance within the limits specified under the rule and subject to such conditions as the rule may prescribes, such a person cannot be held guilty of the offence under Section 21 of the Act if it is shown that his possession is not in contravention of such rule.

Rule 66 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as 'the NDPS Rules') provides as follows :-

"66. Possession, etc. of psychotropic substances. \026 (1) No person shall possess any psychotropic substance for any of the purpose covered by the 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or

voluntary subscription, which is not authorized to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorized under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person :

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

Sub-rule (2) therefore permits a person to keep in his possession for his personal medicinal use the psychotropic substance upto one hundred dosage units at a time.

In the instant case there is evidence on record which indicates that the appellant used the said drug and this is obvious from the deposition of the Investigating Officer, PW-3 as well as the deposition of his mother, DW.1. Moreover three syringes were also recovered from the appellant which also is indicative of the fact that the psychotropic substance recovered from him was for his personal consumption and not for trading purposes.

In similar circumstances this Court in Ouseph @ Thankachan vs. State of Kerala (Criminal Appeal No. 1256 of 2001 disposed of on 6th December, 2001) drew such an inference. There also the accused was found to possess 110 ampoules of the same psychotropic substance together with two syringes.

In Hussain vs. State of Kerala (supra) the appellant was found to possess 6 ampoules of the same psychotropic substance. This Court allowed the appeal preferred by the accused giving him the benefit of Rule 66 of the NDPS Rules which permitted the appellant to keep in his possession for his personal medicinal use the psychotropic substance upto 100 dosage units at a time.

Learned counsel for the State submitted that unless the appellant held a permit granted under Rule 66 of the NDPS Rules, he cannot claim benefit under the provisions of that Rule. We find no substance in the argument because having regard to the provisions of Section 9 of the NDPS Act under which the Rules have been framed, the Central Government is empowered by Rules to permit and regulate the matters mentioned therein. Rule 66 itself permits possession of psychotropic substance below a specified quantity and subject to the conditions stated therein. Thus if the possession of psychotropic substance is justified under the said Rule, no separate permit is required to be issued to the person possessing such psychotropic substance because the Rule itself permits possession of such psychotropic substance to the extent

mentioned in the Rule and subject to the conditions laid down therein. Thus following the principle laid down in Hussain vs. State of Kerala (supra) and having regard to the provisions of Rule 66 of the NDPS Rules read with Section 21 of the NDPS Act, we are satisfied that the psychotropic substance namely, - Buprenorphine Hydrochloride (Tidigesic) found in possession of the appellant was not in breach of Rule 66 of the NDPS Rules and having regard to the fact that the same was for his personal consumption, no offence under Section 21 of the NDPS Act is made out.

In the result this appeal is allowed and the appellant is acquitted of the charge levelled against him. The appellant is on bail. His bail bonds are discharged.

JUDIS