

Case Type	CHI
Filing Number	166/2024
Filing Date	18.05.2024
CNR No.	PBMNA1001037-2024
CIS No.	CHI-273-2024
Date of Decision	05.08.2024

State

Versus

Malkeet Singh son of Hakam Singh, resident of Dodra, Tehsil Budhlada,
District Mansa.

.... Accused

FIR No.39, dated 06.02.2024
under Section 188 of IPC
Police Station, City Budhlada

Present:
Sh. Munish Singla, APP for the State.
Accused on bail, represented by Sh. S. S. Samra advocate.

JUDGMENT: -

1. The above-named accused has been forwarded to face trial for the alleged commission of offence punishable under Section 188 of Indian Penal Code by S.H.O. of Police Station, City Budhlada.
2. The case set up by prosecution is that on dated 06.02.2024, IO along with police party was patrolling. When the police party reached near Old Gas Agency, Budhlada, they saw a man peeping in polythene. On seeing the police party, he got perplexed. Police party stopped him

and upon asking, he disclosed his name as Malkeet Singh son of Hakam Singh (**hereinafter referred to as accused**). IO checked the polythene in which 03 strips each containing 15 capsules IP Signore 300 MG were recovered, which was in violation of the order promulgated by a public servant i.e. DM Mansa order no. 1930-1992 Section 188 of IPC was registered against the accused. Accused was arrested. Statement of witnesses were recorded. After completion of necessary investigation, the challan was presented in the Court for putting the accused on trial.

3. Challan was presented. Copies of Challan and other documents were supplied to accused free of cost as envisaged under Section 207 of Cr.P.C. Thereafter, accused was charge sheeted for the commission punishable under Section 188 of IPC, to which he did not plead guilty and claim trial.

4. Thereafter, case was fixed for prosecution evidence. To prove its case, prosecution examined witnesses ASI Jagdev Singh as PW-1, Vipin Goyal as PW-2, HC Jagsir Singh as PW-3. Thereafter, Ld. APP for the State closed prosecution evidence.

5. After closure of prosecution evidence, accused was examined under Section 313 of Cr.P.C. in which all the incriminating evidence appearing against the accused was put to him to which he pleaded innocence and false implication. Accused did not opt to lead defence evidence.

6. I have heard the learned APP for the State, learned defence counsel and have gone through the evidence on record.

7. From the arguments put forth the following point of determination arise in the present case: -

Question: - Whether on 06.02.2024, in the Area of City Budhlada, accused was found in possession of 03 strips containing 45 capsules each Signature capsules Pregabalin IP Signore 300 MG in violation of the order promulgated by a public servant i.e DM Mansa vide order No. 1930-1992 dated 31.01.2024 and thereby the accused has committed an offence punishable under Section 188 of IPC?

8. Learned APP for the State contended that the prosecution has been able to bring home the guilt of the accused beyond the shadow of reasonable doubt and accused should be punished for the crime committed by him.

9. On the other hand, learned defence counsel contended that the entire chain of events has also not been proved and the accused has been falsely implicated by the police in the present case. Hence, accused should be acquitted accordingly.

10. In order to prove its case prosecution examined ASI Jagdev Singh PW-1. He was the custodian of the case property that is signore 300mg. The case property was handed to him after recovery by the IO. and proved the following documents as follows: -

Sr. No.	Exhibits	Documents
1.	Ex. PW3/A	Entry No. 1113 in register No. 19

11. Thereafter, prosecution Vipin Goyal as PW-2. He was the clerk, DC office Mansa who proved documents as follows: -

Sr. No.	Exhibits	Documents
1.	Ex. P1	Order of District Magistrate
2.	Ex. P2	Complaint U/s 195 of Cr.P.C.

12. Thereafter, prosecution examined HC Jagsir Singh as PW-3. He reiterated the facts mentioned in paragraph no. 2 of the judgment and deposit about how the police party was patrolling when the accused was found in possession of the prohibited medicine. He proved the documents as follows: -

Sr. No.	Exhibits	Documents
1.	Ex. PA	Ruqa
2.	Ex. PB	Copy of FIR
3.	Ex. PC	Recovery memo
4.	Ex. PD	Rough site plan
5.	Ex. PE	Arrest memo of accused
6.	Ex. PF	Personal search memo of accused
7.	Ex. P1	Order passed by District Magistrate
8.	Ex. P2	Under Section 195 Cr.P.C
9.	Ex. MO1	Case Property

13. If we see the case of the prosecution, PW-2 proved on record the order passed by the DM Ex. P1. As per the which the possession and sale of capsules containing Pregabalin Salt 300 MG were restrained and

the said order was issued by the DM, Mansa while exercising powers vested with him. Further, testimony PW-1 and PW-3 proved on record that accused was found in possession of 45 capsules containing Pregabalin Salt 300 MG. Further, recovery memo Ex. PC, proves that 45 capsules were recovered from accused. So, the prosecution has proved beyond reasonable doubts that the accused had committed the offence in question.

14. Ld. Defence counsel for the accused has argued that the investigation officer had not joined any independent witness. In the absence of the same, accused cannot be held liable for the offence. I do not agree with the arguments advanced by the Ld. Defence counsel for the accused because the Hon'ble Supreme Court of India has, in several judgments, held that it is common knowledge that independent witnesses, whose testimony can inspire confidence of the Court and who can be respectable, feel shy to become witnesses in police cases of such type of recovery. The fact, however, remains that the evidence on record did not indicate the presence of independent witnesses at the time of recovery and therefore, the non-inclusion of independent witnesses will not be fatal to the case of the prosecution. Witnesses were not cross-examined by defence counsel on material points and nothing came out in favour of accused. So, the case of the prosecution has been proved beyond all reasonable doubts of shadow. The testimony of witnesses of prosecution went unblemished.

15. From the aforesaid discussion, I am of the considered view that the prosecution has clearly established its case against the accused beyond all reasonable doubts of shadow and I hereby convict the accused Malkeet Singh of committing the offence under section 188 of Indian penal code, 1860. Let, the convict be heard on quantum of sentence.

Pronounced in Open Court on 05th, August 2024.

**Manu Mittu, PCS
Sub-Divisional Judicial Magistrate
Budhlada/UID No. PB0383**

QUANTUM OF SENTENCE

Present:

Convict Malkeet Singh in custody, represented by Sh. S. S. Samra, Advocate.

Sh. Munish Singla, APP for the State.

16. Heard the convict as well as the Learned APP for the State on the quantum of sentence. Convict stated that he is only bread winner of his family and first-time offender and requested to take lenient view.

17. Ld. Assistant public prosecutor for the State stated that the accused had committed the offence in question, as he has violated the order of the District Magistrate and action should be taken against him

18. I have considered the plea. Taking into consideration all the facts and circumstances of the case and the plea taken by the convict on the question of sentence. This Court is of the view that having regard to the nature of the offence and the character of the offender, the convict is hereby sentenced to pay fine of Rs. 500/- in default of same, he shall

undergo Rigorous Imprisonment for 7 days. The case property, if any, be disposed of as per rules. His bail bonds and surety bonds are hereby discharged. Copy of this judgment, supplied to the convict free of cost. File be completed and consigned to the record room after due compliance.

Pronounced in Open Court on 05th, August 2024.

**Manu Mittu, PCS
Sub Divisional Judicial Magistrate
Budhlada/UID No. PB0383**

**Typed by: -
Sandeep Kaur
*Stenographer Gr. III***

Present:

Sh. Munish Singla, Ld. APP for the State.

Accused on bail, represented by Sh. S S. Samra, Advocate.

Arguments heard.

Vide my separate detailed judgment of even date, the accused Malkeet Singh has been convicted and sentenced to pay fine of Rs. 500/- in default of same, he shall undergo Rigorous Imprisonment for 7 days. Fine paid. Copy of this judgment, has been supplied to convict free of cost. File be consigned to the judicial record room, Budhlada after due compliance.

Pronounced in Open Court on 05th, August 2024.

**Manu Mittu, PCS
Sub Divisional Judicial Magistrate
Budhlada/UID No. PB0383**

Typed by: - Sandeep Kaur