



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22157 of 2023 (O&M)

Reserved on:20.01.2026

Pronounced on: 07.03.2026.

Om Parkash

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Argued by : Mr. Shivansh Malik, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, Addl. A.G., Haryana.

SURYA PARTAP SINGH, J. (Oral):

The learned Additional Sessions Judge, Panckhula while dealing with a complaint, filed by the respondent-State through Drug Control Officer, has observed that a *prima facie* case for framing of charge for the commission of offence punishable under Sections 28, 27(b) (ii) and 28-B of Drug and Cosmetics Act 1940 is made out against the petitioner. The petitioner is aggrieved of the above mentioned order, hence the present petition under Section 482 of Cr.P.C. for quashing of aforementioned order.

2. In nut-shell the facts emerging from record are that on 31.08.2015 the accused a team of police officials received a tip-off from a source that the petitioner was carrying some narcotic substance. As per the case projected, by the police acting upon the above mentioned information the accused was apprehended along with a polythene bag and when the contents of the bag were checked it was found that in the above mentioned polythene bag there



were narcotic drugs, currency notes and other medicines. According to the case set-out by the prosecution during the course of above mentioned recovery process/investigation, the petitioner-accused, hereinafter being referred to as 'petitioner' only, fled from the spot. In view of above mentioned happening two cases were registered against the petitioner; one case was vide FIR No.175 dated 01.09.2015, for the commission of offence punishable under Sections 22 of Narcotic Drugs & Psychotropic Substances Act, 1985, hereinafter being referred to as NDPS Act, and the another was vide FIR i.e. FIR No.176 dated 02.09.2015 for the commission of offence punishable under Section 224, 225, 420 IPC and Section 181 of Motor Vehicles Act.

3. Heard.

4. It has been contented on behalf of the petitioner that the petitioner is a victim of double jeopardy as with regard to the same incident, i.e. recovery of narcotic substance and other drugs, he has already faced trial in the Court of learned Additional Sessions Judge, Panchkula and a final verdict has already been passed by the learned Additional Sessions Judge, Panchkula. As per learned counsel for the petitioner this fact already stands decided that the prosecution has failed to prove the recovery of any narcotic substance or drug from the possession of petitioner. According to learned counsel for the petitioner once the above mentioned question has already been determined, the petitioner cannot be tried for the recovery of the same contraband, by a different Court.

5. In addition to above, the learned counsel for the petitioner has also contended that otherwise also the second trial is bound to fail as the entire trial is founded upon the plea that recovery of contraband had taken place from the



possession of petitioner by the police authority and qua that aspect the police authority have already failed in the former trial.

6. The above mentioned arguments have been controverted by the learned State counsel. According to learned State counsel irrespective of the fact that the incident of recovery is common in the previously instituted case, under NDPS Act, and the present complaint, under Drugs and Cosmetics Act, yet the law permits the conduct of present trial as the recovery of narcotic substance is an offence under Narcotic Substance Act and the recovery of other drugs without licence is covered under Drugs and Cosmetics Act. According to learned State counsel the facts of the present case are quite peculiar wherein it is established that by doing one act the petitioner had violated several provisions of law covered under different acts. According to learned State counsel since the procedure for prosecution in different acts, i.e. 'the NDPS Act' and 'the Drugs and Cosmetics Act' are different, the prosecutions have been launched accordingly. It has been contended by learned State counsel that both the prosecutions are maintainable.

7. In addition to above, the learned State counsel has also contended that on the basis of a case instituted on police report the findings with regard to violation of provisions of the Drugs & Cosmetics Act should not have been returned, and therefor, the verdict of learned Additional Sessions Judge, Panchkula qua above mentioned component is without jurisdiction.

8. The record has been perused carefully.

9. A perusal of record shows that prosecution in both the cases, wherein FIRs have been slapped against the petitioner, has failed to establish his guilt. With regard to case pertaining to FIR No.176, the learned Judicial



Magistrate Ist Class, Panchkula passed the judgment of acquittal of the petitioner, vide judgment dated 02.09.2015, and with regard to case arising out of FIR No.175 for the commission of offence punishable under Section 22 of NDPS Act and Sections 18A, 18C, 26-A of Drugs Act and Section 420 of IPC, the learned Additional Sessions Judge, Panchkula, acquitted the petitioner vide judgment dated 16.04.2022. With regard to present case the verdict in the case pertaining to FIR No.176 dated 02.09.2015 is not relevant. However the verdict with regard to present case FIR No.175 dated 01.09.2015 is relevant.

10. In the above mentioned judgment the learned trial Court had framed two points of determination. They abovesaid points are reproduced as under:-

- i) *Whether on 01.09.2015, any narcotic drugs were found to be recovered from the possession of the accused which fall under Section 22 of the NDPS Act without any licence or permit?*
- ii) *Whether allopathic medicines without any valid drugs licence or any valid registration certificate were found in conscious possession of the accused which fall under Section 27 of the Drugs & Cosmetic Act, without any permit or licence?*

11. A bare perusal of the above mentioned two points of determination shows that the learned Additional Sessions Judge, Panchkula after discussion of entire evidence arrived at a conclusion that the prosecution was not successful in proving both the above mentioned points of determination. Resultantly both the above mentioned points of determination have been answered by the learned Additional Sessions Judge, Panchkula



against the prosecution.

12. The natural out come of above mentioned finding recorded by the learned Additional Sessions Judge, Panchkula leads to the situation that in the above mentioned trial, the prosecution had failed to prove that any narcotic drugs constituting an offence under Section 22 of NDPS Act or any allopathic medicines without any drug licence, constituting an offence under Section 27 of the Drug & cosmetic Act, were recovered from the possession of petitioner.

13. It is relevant to mention here that after the above mentioned judgment of acquittal of petitioner, in a case arising out of FIR No.175 dated 01.09.2015, on 16.04.2022, the order dated 17.08.2022 which has been impugned by virtue of present petition, has been passed in a complaint case filed by the Drug Control Officer. In the abovementioned complaint it has been alleged that the petitioner has committed an offence under Sections 18-A, 18(c) and 26(a) of the Drugs and Cosmetics Act 1940.

14. The above mentioned complaint has been filed by the Drug Inspector on the ground that the petitioner was arrested by the police on 31.08.2015 on the basis of secret information, and that from his possession a polythene bag containing some narcotic substance, currency notes and some medicines was recovered. As per facts projected in the complaint by the complainant (Drug Control Officer), on the call of Police Officer he had visited Police Station Sector-16 Panchkula on 01.09.2015 and found the petitioner along with drug in custody. According to complainant (Drug Control Officer) since the petitioner was found in possession of drugs without any licence, as per provisions enshrined 'the under Drugs and Cosmetics Act', form-16 was prepared in accordance with law and necessary formalities were completed



with regard to seizure, sealing and testing of drug and thereafter the complaint was filed.

15. If the factual matrix of the present case is analyzed in the light of entire scenario and various events which have unfolded in the present case, it raises two issues:-

- i) firstly, once the recovery of contraband and medicines from the possession of petitioner could not be proved before the learned Additional Sessions Judge, Panchkula as to whether the same fact can be proved in subsequent complaint;
- ii) whether the petitioner who has already been tried qua the offence that he was found in possession of medicines without licence, can be tried again on the complaint of Drug Control Officer.

16. The answer of both the above mentioned queries is in negative. The foundation of above mentioned observations is the peculiar facts and circumstances of the present case.

17. The first and foremost aspect to be taken into consideration in the present case is that, that the allegations against the petitioner are of being in possession of certain drugs, covered under the Drugs and Cosmetics Act, without licence. The first and foremost fact to be proved by the prosecution is the recovery of those drugs from the possession of petitioner. The contents of the complaint itself shows that it was not the Drug Inspector who had recovered drugs from the possession of petitioner. As per story, set out in the complaint itself, the recovery of above mentioned drugs was effected by the police officers and the Drug Control Officer was called in the police station



where he completed the requisite formalities with regard to seizure and sealing of recovered drugs. The above mentioned fact itself shows that for the success in complaint the first and foremost thing to be proved by the complainant is the recovery of drugs from the possession of petitioner.

18. Qua above mentioned aspect the learned Additional Sessions Judge, Panchkula has already rendered its verdict wherein the entire factum of recovery of drugs including narcotic substances, from the possession of petitioner has not been believed by the learned Additional Sessions Judge, Panchkula. There is nothing on record to show that the above mentioned verdict has been challenged by the prosecuting agency. Thus once the verdict of Court has become final qua the fact that story set out by the prosecution with regard to recovery of drug was not worth believable, the present complaint which is founded upon the same plea is bound to fail. The conduct of trial which is bound to fail is nothing but a futile exercise. Once the fate of the trial is already written on the wall in bold letters, there cannot be any logic for undergoing such trial.

19. The second aspect involved in the present case is the plea of the petitioner, that for the same set of acts he is being tried again. There is no quarrel in the present case that there was only one instance wherein the alleged recovery of narcotic substances, covered under NDPS Act, and other drugs, covered under Drugs and Cosmetics Act, from the possession of petitioner had taken place. By virtue of present petition it has been ordered that charge against the petitioner be framed under Section 27 of the Drugs & Cosmetic Act. The verdict of the learned Additional Sessions Judge Panchkula, dated 16.04.2022, shows that qua abovesaid aspect the plea was raised before the



learned Additional Sessions Judge Panchkula, and it has been consciously dealt with by the learned Additional Sessions Judge, Panchkula. Thus, with regard to same recovery filing of two complaints are not only violative of Article 20 of the Constitution of India but also of Section 300 Cr.P.C., which read as under:-

20. Protection in respect of conviction for offences:-

(1)No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2)No person shall be prosecuted and punished for the same offence more than once.

(3)No person accused of any offence shall be compelled to be a witness against himself.

300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be



afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate. (6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.



20. In addition to above, it is also relevant to mention that filing of complaint with regard to the same incident for which a report under Section 173 Cr.P.C. has already been filed by the police is also violative of Section 210 of Cr.P.C. Once the petitioner has already been tried for one act in the name of technicalities of law for the same set of acts he cannot be forced to face second trial under the different act before a different forum.

21. Taking into consideration the cumulative effect of above mentioned observations made in the foregoing paragraphs it is hereby held that the impugned order has been passed in contravention of laid down law and therefore, the same is not sustainable. Hence, finding merit in the present petition, it is hereby observed that the present petition deserve to be **allowed** and the impugned order deserves to be quashed. Thus, by accepting present petition the complaint filed by the respondent i.e. complaint No.COMA-4-2022 dated 07.03.2022 State (Through Drugs Inspector, Panchkula Vs. Om Parkash) along with summoning order and the impugned order are hereby quashed.

22. Pending miscellaneous application(s), if any, also stands disposed of.

(SURYA PARTAP SINGH)
JUDGE

07.03.2026

Manoj Bhutani

Whether speaking/reasoned Yes/No
Whether reportable Yes/No