

**IN THE COURT OF SARU MEHTA KAUSHIK
ADDITIONAL SESSIONS JUDGE, SAS NAGAR-MOHALI.**

SESSIONS CASE NO.03/19.05.2015.

CIS NO.SC/69/2015.

DECIDED ON:07.04.2016.

State of Punjab through Drugs Inspector, SAS Nagar.

Versus

Parvesh Kumar, aged about 25 years, son of Tilak Raj, resident of House No.350, Sector-40A, Chandigarh, Incharge & Sole Proprietor of M/s Punjab Crockery SCO No.30, Phase-1, SAS Nagar, Mohali.

-----Accused.

Complaint Case No.09 dated 5.2.2015.

Under Section 18(c) punishable Under section 27(b) (ii) & Section 18A punishable under Section 28 and Section 18(a) (i) punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940/Rules, 1945.

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Present : Sh.H.S.Rakkar, learned Additional P.P for the State.
Accused on bail with counsel Sh.Navin Behl Advocate.

J U D G M E N T

1. Complainant Manpreet Kaur, Drugs Inspector, Mohali filed complaint under Section 18(c) punishable under Section 27(b) (ii), Section 18A punishable under Section 28 and Section 18 (a) (i) punishable under Section 27 (d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act) and Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the Rules), on 05/02/2015 in the Court of Chief Judicial Magistrate, S.A.S. Nagar (Mohali) submitting that Amit Lakhanpal and Gurpreet Singh Sodhi are notified as Drugs Inspectors for the whole of Punjab, vide Punjab Government Notification dated 18.11.2011 and the complainant is notified Drugs Inspector for the whole of Punjab, vide Punjab Government Notification dated 05.02.2013. Complainant has been appointed Assistant Public Prosecutor Ex-Officio

for conducting prosecution in the Court of Magistrates in the State of Punjab vide Punjab Government Notification dated 05.02.2013. On 03.07.2014, on the basis of secret information received by Jasbir Singh, State Coordinator Tobacco Control Cell and on directions of Civil Surgeon, Mohali, Drugs Inspectors, Gurpreet Singh Sodhi and Amit Lakhanpal along with Ram Darshan, SHO Phase 1 Mohali, Jasbir Singh Bains and Dr. Gurpreet Singh Binopal, District T.B. Officer went for inspecting the premises of M/s Punjab Crockery SCO 30, Phase-1, Mohali. Accused Parvesh Kumar was present as Incharge and sole proprietor of M/s Punjab Crockery. The inspecting team after disclosing the identity and purpose of visit wished to conduct his personal search and of his belongings which he refused. On efforts being made to join public witnesses, Amarjit Singh proprietor of M/s Singh Graphics SCO 31, Phase-1, Mohali joined the inspecting team as independent witness. During inspection, an E-cigarette in a black box labelled as "E-Health Cigarette" with the label "Smoking is injurious to health" was found stocked and displayed in the said premises, along with Charger, cigarette body holder and a box of cartridges. There were 9 cartridges in all out of which 8 were unused and 1 was found empty with a pamphlet describing manner to use the "E-cigarette". The accused was unable to show any valid Drugs sales license or RMP certificate as required under Rule 2(e) (e) of Drugs and Cosmetics Rules 1945. No document was shown on demand which could authorize the accused to stock E-cigarette for sale and distribution. He failed to produce the source of accusation of the same as required under Section 18A of Drugs and Cosmetics Act, 1940. The box containing charger, cigarette body holder, 1 empty cartridge, pamphlet were seized vide Form No. 16, which was duly signed by all the team members and the independent witness. One sample of loaded cartridge, containing 2 cartridges was drawn for test/analysis vide Form No. 17 as per the provisions of the Act. Credit receipt for the same for Rs. 350 was issued by the accused. Copy of Form No. 17 was handed over to the accused after taking the receipt thereon. It was signed by all the team members as well as independent witness. Separate spot memo was

prepared by Gurpreet Singh Sodhi, the then Drugs Inspector Mohali, which was signed by all the team members and independent witness. On 04/07/2014, Amit Lakhnpal, the then Drugs Inspector, Mohali presented the seized drugs in the court of CJM Mohali for custody orders of the said drugs as required under Section 23 (5) (b) of the Act and obtained the said order. A sealed sample portion was sent to the Government Analyst, Punjab, Chandigarh for testing vide Form No. 18 as required under Section 23 (4) (i) of the Act and the receipt was obtained. Complainant on joining as Drugs Inspector Mohali received the case file along with the case property from her predecessor. The Government Analyst declared the sample to be positive for Nicotine. Contents of Nicotine were found to be 1.23 mg/cartridge. Complete investigation report was sent to the State Drugs Controller, Punjab by Drugs Inspector Mohali. Registered notice dated 14/08/2014, was sent to the accused. Reply from accused was received on 29/08/2014. Permission for prosecution against the accused was received from the State Drugs Controlling and Licencing Authority, Punjab vide letter dated 02.10.2014. The accused Parvesh Kumar has contravened the provisions under Section 18(c) read with Rule 62 & Section 18 A of the Act punishable under Section 27 (b)(ii) and Section 28 respectively. Hence the complaint.

2. Vide order dated 05.02.2015 the learned Chief Judicial Magistrate, S.A.S. Nagar (Mohali) summoned the accused for having committed offence punishable under Section 27(b) (ii) and 28 of the Act.

3. Upon issuance of summons, the accused appeared before the said court and was supplied with the copy of complaint and requisite documents.

4. From the complaint and documents annexed therewith, it appeared that a case exclusively triable by the Court of Sessions is made out against the accused, hence the case was committed to the Court of Sessions by the learned Chief Judicial Magistrate, S.A.S. Nagar (Mohali), vide order dated 11.05.2015.

5. On finding a *prima facie* offence punishable under

Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 charge was framed against the accused on 19.5.2015, to which accused pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined the following witnesses:-

No. and Name of the witness.	Documents proved.
PW1 Amit Lakhanpal, Drugs Inspector.	Ex.PW1/A- Notification dated 18.11.2011. Ex.PW1/B-Form No.17. Ex.PW1/C-Credit Receipt. Ex.PW1/D-Form No.16. Ex.PW1/E-Spot Memo. Ex.PW1/F-Form No.18. Ex.PW1/G-Application for custody order dated 04.07.2014. Ex.PW1/I-Custody order dated 04.07.2014. Ex.PW1/H-Receipt. Ex.PW1/J-Investigation Report. Ex.PW1/K-Report of Govt. Analyst. MOI to MO6-Case Property.
PW2 Dr. Gurpreet Singh Binopal, District T.B.Officer.	Ex.PW2/A- Letter from Civil Surgeon, Mohali dated 02/07/2014.
PW3 Maninder Singh, Clerk O/o Director Health.	Ex.PW3/A- Sanction of prosecution.
PW4 Swaran Singh, Dealing Assistant, Drugs Branch O/o Civil Surgeon.	Ex.PW4/A- Copy of extract from Dispatch Register.
PW5 Manpreet Kaur, Complainant.	Ex.PW5/A-Notification dated 05.02/2013. Ex.PW5/B- Notification dated 05.02.2013 Ex.PW5/C- Letter from the office of Assistant Drugs Controller, Punjab to send Investigation Report.

	<p>Ex.PW5/D- Notice to the accused.</p> <p>Ex.PW5/E-Reply from the accused.</p> <p>Ex.PW5/F-Investigation Report.</p> <p>Ex.PW5/G-Minutes of meeting with regard to E-cigarette.</p> <p>Ex.PW5/H-Complaint.</p>
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7. Statement of accused Section 313 of the Code of Criminal Procedure was recorded putting to him all the circumstances appearing against him in the prosecution evidence and pleaded false implication. He further stated that he had been falsely implicated in the instant case due to political pressure. No recovery had been effected from him. No raid as alleged was conducted in his shop. He denied receipt of the notice and reply filed by him and that he did not possess any E-cigarette.

8. Accused in his defence evidence, examined Alok Singh Rana as DW1, Satish Kumar as DW2 and himself appeared into the witness box as DW3 after his application under Section 315Cr.P.C. dated 21/01/2016 was allowed.

9. Heard Mr.H.S.Rakkar learned Additional Public Prosecutor for the State and Mr.Naveen Behl Adv learned defence counsel and the accused in person.

10. It was argued by the learned Additional Public Prosecutor for the State that on 03.07.2014, a team under the District Drugs Inspector inspected the premises of M/s Punjab Crockery,SCO 30, Phase-1 Mohali. It was argued that nicotine was found as 1.23 mg per cartridge. Nicotine in the form of E cigarette is not approved under the Act. The inspecting team conducted the inspection in presence of Amarjit Singh who happened to be an independent witness and thus the prosecution has taken all the measures while conducting inspection and the accused be convicted for violating the provisions of the Act.

11. Learned counsel for accused strenuously argued that there is no provision in the Act to ban the E-cigarette . Prosecution has not

brought any document to show that nicotine is a drug under the Act or not. It was further argued that the independent witness joined by the inspecting team had personal and previous enmity with the accused and thus his testimony cannot be reliable. Prayer for acquittal of the accused was made.

12. From the above said arguments, following points of determination arise in this case :-

1. Whether on 3.7.2014 in the premises of Punjab Crockery SCO 30 Phase-1, Mohali, the accused had stocked E-cigarette for sale and distribution without having any valid drug sale licence?
2. Whether the accused failed to produce any record or document for acquisition of the same?
3. Whether Nicotine in the form of E-cigarette is a drug under the Act?

13. To prove its case against the accused, prosecution examined as many as six witnesses. PW1 Amit Lakhanpal the then Drug Inspector, Mohali deposed that on 3.7.2014 on the directions of Civil Surgeon, Mohali and secret information received by the State Coordinate Tobacco Control Cell, Punjab, he alongwith with team comprising Gurpreet Singh Sodhi, the then Drug Inspector, Mohali, Gurpreet Singh Nodal Officer, Tobacco Control Cell, Ram Darshan SHO, Phase-1 inspected the shops of the accused namely M/s Punjab Crockery in his presence. The team joined Amarjit Singh Proprietor of M/s Singh Graphics SCO 31, Phase-1, Mohali as a public witness. The team disclosed the purpose of their visit but the accused refused to get his personal search conducted by them. On searching the premises a box labelled as "E-health cigarette" was found displayed for sale on the rack on the right hand side of the shop. The box was containing a cigarette body holder, a charger, a pamphlet describing the usage and 9 unlabelled yellow coloured plastic cartridges out of which 8 were found loaded and one was empty. He stated that he took the samples dividing the 8 loaded

cartridges in four portions of two cartridges each vide Form No.17 Ex.PW1/B duly signed by Jasbir Singh Bains and Gurpreet Singh Binopal, other team members, independent witness and the accused. Copy of Form No.17 alongwith one sealed sample portion was handed over to the accused. The remaining sample portions are MO1 and MO2. The accused issued a credit receipt of Rs.350 to the team which is Ex.PW1/C. The accused could not show any valid drugs licence or RMP Certificate which could authorise him to stock the E-centage for sale and distribution. Neither could he disclose the source of acquisition of the drugs. The remaining contents of the box were sealed with seal bearing impression 'AL' vide Form No.16 Ex.PW1/B which was duly signed by all the team witnesses, independent witness and accused. Copy of Form No.16 was handed over to the accused. Spot memo was prepared which is Ex.PW1/E and copy of the same was handed over to the accused. He identified the case property and the accused in the Court. One sealed sample portion alongwith Form No.18 Ex.PW1/F sent to the Govt. Analyst Punjab for testing. The necessary custody orders were obtained on 4.7.2014. The investigation report was sent to the State Drugs Control, Punjab and the test report was received on 16.7.2014 and the sample was found positive with the contents 1.23 mg per cartridge. In his cross examination he deposed that nicotine is defined in the Act but he could not remember the said provision. He stated that nicotine is used in the medicinal form in the form of Lozenges Formulation i.e as chewing gum. He deposed that nicotine was not visible directly in the sample of cartridge taken by them but the same was suspected to be present therein. He stated that he sealed the sample and the other two portions of the cartridges with his seal 'AL'. He deposed that there is no permissible limit of Nicotine in chemical form under the Act. 2 mg and 4 mg of Nicotine in Lozenges is exempted under the Act.

14. PW2 Dr. Gurpreet Singh Binopal, District T.B. Officer-Cum-Nodal Office, Tobacco Control Office of Civil Surgeon, Mohali also deposed on the same lines as PW1. In his cross examination he deposed that the inspecting team requested some of the neighbouring shop keepers

to join the team but they refused. Thereafter Amarjit Singh proprietor of the neighbouring shop namely Singh Graphics joined the team as independent witness. He deposed that being a physician he was aware that Nicotine is a drug and is also used for the purpose of quitting smoking but only in a form of gum patch. Inhalant therapy using Nicotine is not prescribed to quit smoking as the same can be lethal to small children and infants. He identified his signatures on the documents prepared at the spot.

15. PW3 Maninder Singh, Clerk Office of Director Health & Family Welfare, Punjab had brought the record pertaining to prosecution sanction and proved the same on record as Ex.PW3/A.

16. PW4 Swaran Singh, Dealing Assistant Drugs Branch Office of Civil Surgeon, Mohali had brought the dispatch and receipt register to prove that notice with regard to inspection of premises of accused was sent to him vide letter No. Drugs/2014/SAS Nagar/1163 dated 14.8.2014 by Drugs Inspector. The accused sent his reply to the said notice which was received in the office vide receipt No.987 (DIN) dated 29.8.2014 and he proved on record extract of dispatch register Ex.PW4/A, postal receipt Ex.PW4/B and extract of receipt register as Ex.PW4/C.

17. PW5 Manpreet Kaur stated that she got transferred to Mohali on 23.7.2014 and received a letter dated 30.7.2014 from the Office of Assistant Drugs Controller, Punjab to send the investigation report in the instant case. A notice was issued to accused Parvesh Kumar vide letter No.Drugs-2014/SAS Nagar/1163 dated 14.8.2014 through registered post. Reply from the accused was received vide receipt No.987 dated 29.8.2014. A comprehensive investigation report with a request for sanction of prosecution was sent to State Drugs Controller, Punjab and the sanction order were received in the office vide letter No.Drugs (4) PB-2014-25162 dated 2.10.2014. Minutes of meeting held regarding the Electronics Nicotine Delivery System (ENDS) known as E cigarette on 10.7.2013 was sent by The State Drugs Controller, Punjab to ZLAs and Drugs Inspectors vide letter No.Drugs (7) Pb-2013-16988-89 dated

5.9.2013 which is Ex.PW5/G. Complaint against the accused was filed by her in the Court of CJM, Mohali on 5.2.2015 and she identified her signatures thereon. In her cross examination she deposed that Ex.PW5/G was received through e mail. She stated that the said document were not placed on file with the complaint. She deposed that none of the provisions, rules, regulations, instructions, guidelines or any ordinance issued by Central or State Government provides that E-cigarette is the form of Nicotine preparation. She further stated that Nicotine is mentioned in the schedule 'K' in the Drugs Act as a 'drug'.

18. PW6 Jasbir Singh Bains Senior Assistant-cum-Program Coordinator State Tobacco Control Cell, Punjab supported the prosecution version with regard to information against the accused and raid having been conducted in his shop leading to recovery of the E cigarette displayed therein. In cross examination he stated that he received the secret information from State Tobacco Control Cell, Punjab in writing on 2.7.2014. The information was sent to the Office of Civil Surgeon, Mohali. He deposed that when the inspecting team entered the shop of the accused, one E cigarette was found lying in the show window. The accused could not produce any drug licence or bill to show that he was authorised to possess the said E cigarette.

19. The accused in his defence evidence examined Alok Singh Rana as DW1 who deposed that the accused Parvesh Kumar and the independent witness Amarjit Singh were having neighbouring shops. In the year 2014 a dispute had arisen in the market among the shop keepers due to opening of liquor vend adjoining to the shop of the accused. All the shop keepers had agitated against the opening of said liquor shop but only Amarjit Singh favoured the same as he was known to the liquor vendor. Parvesh Kumar was a leader of the group opposing the opening of the said liquor vend, due to which relations between accused and Amarjit Singh were strained.

20. Accused further examined Satish Kumar as DW2 who also deposed on the same lines as of DW1 with regard to enmity between

Amarjit Singh and the accused. He admitted that he was residing in the same house on 1st floor wherein the accused is residing on the ground floor.

21. Accused Parvesh Kumar himself appeared into the witness box as DW3 and deposed that he was having dispute with Amarjit Singh, owner of Singh Graphics with regard to opening of liquor shop at to his shop namely M/s Punjab Crockery. All the neighbours and shopkeepers were protesting against the opening of the said liquor shop whose owner was relative of Amarjit Singh. Due to this reason, Amarjit Singh developed enmity with the accused as the liquor shop could not be opened due to the protest by the accused and others. To take the revenge upon him, Amarjit Singh threatened to implicate him in some criminal cases due to his connection in the Police department and other departments of Punjab Government. He further deposed that no official of the drugs Department or any of the team members had ever visited his shop. No recovery of E-cigarette was effected from his shop. He denied having signed any document purportedly prepared by the members. He further denied having sent any reply or receiving any notice. He stated that SHO, PS Phase 1, Mohali obtained his signatures on some blank papers in the Police Station itself to settle the matter with Amarjit Singh. The complaint is stated to have been instituted against him due to political pressure and Police approach of Amarjit Singh in collusion with the officials of the concerned departments.

22. In the instant case, prosecution was under an obligation to prove that the accused was found in possession of the E-cigarette, which contained Nicotine which is unapproved of under the Drugs and Cosmetics Act and that the same was stocked for sale and further that he could not produce any document with regard to source of its acquisition. To prove the same, prosecution examined complainant, along with other team members who duly supported the prosecution version with regard to secret information against accused, inspection of his shop, recovery of E-cigarette kept in the show window of his shop for sale and non production

of drugs license or any document which could authorise him to stock the E-cigarette for sale in his shop. He could not even show any document to indicate the source from where he had got the said E-cigarette. All the witnesses withstood lengthy cross-examination but no material contradictions which could be favourable to the accused were found therein. All the documents prepared by the inspecting team are signed by the accused. Thus the prosecution has successfully proved that on inspection of the shop of accused, an E-cigarette was found stocked therein for sale at the said shop was a crockery store and there was no requirement to keep the E-cigarette in the show window of the shop.

23. Notice dated 14/08/2014 was sent through registered post to the accused for explaining with regard to contravention of provisions of the Act. PW4 Swaran Singh proved the extract from the dispatch register as Ex. PW4/A and the postal receipt as Ex. PW4/B, which indicate that an opportunity was given to the accused to give explanation as to how he was authorised to stock the E-cigarette in his shop for sale. PW4 further proved Ex. PW4/C extract from the receipt register which indicates that reply from the accused was received in the office on 29/08/2014. The said reply is on the file as Ex. PW5/E wherein it has been mentioned by the accused that the said E-cigarette recovered from his shop was used by him to get rid of the habit of smoking. Though the accused has denied receiving any notice or sending any reply yet the documents on file in the form of postal receipt and extracts from dispatch and receipt registers very well indicate that the accused had received the notice and had also given the reply to the same. It has come up in evidence that Nicotine in gum form is an aid to quit smoking but not in the form of inhalant as is found in the E-cigarette.

24. Further, the accused has taken up his defence that the independent witness, Amarjit Singh had prior enmity with him due to protests carried by the accused for restraining opening of the liquor vend in the market. The accused examined 2 witnesses in his defence to prove that the independent witness joined by the prosecution was inimical

towards him. Even if this line of defence taken up by the accused is accepted, it is not adequate enough to create a dent in the prosecution version especially when the inspecting team was comprised of various members from different government departments and no enmity with any of the officials of the inspecting team has been pleaded by the accused.

25. Ld. counsel for defence contended that Nicotine is not a drug and thus the accused is not liable for the violation of provisions of the Act. The Act provides that Nicotine in the form of Lozenges 2mg and 4mg is approved drug by the Drugs Controller General India. Ex.PW5/G is the notice sent to all ZLAs and Drugs Inspectors in the State of Punjab, with regard to minutes of meeting held on Electronics Nicotine Delivery System (ENDS) commonly known as E-cigarette, wherein it has specifically mentioned that Nicotine preparation in the form of E-cigarette is unapproved drug and contravenes the provisions of Drugs and Cosmetics Act/Rules 1945 and they are instructed to take action against the offenders. The government analyst's report Ex.PW1/K mentions that the sample cartridge sent for examination by the inspecting team was found to be having 1.23mg Nicotine per cartridge. Therefore the contention raised by Ld. Counsel in this regard is not sustainable.

26. In the light of discussion made above this court has reached to the conclusion that prosecution has been able to prove that E-cigarette contained unapproved drug and the accused was found in its possession who had stocked it for sale without any valid license and also failed to produce any document with regard to its acquisition. Hence the points of determination stand decided in favour of prosecution. Accused is found guilty of violating the provisions of the Act and is held liable for committing the offences under Section 27(b) (ii) read with Section 18(c) and Section 28 read with Section 18A of the Act. Let the convict be heard on the quantum of sentence.

PRONOUNCED
DATED:07.04.2016.

(SARU MEHTA KAUSHIK)
ADDITIONAL SESSIONS JUDGE
SAS NAGAR-MOHALI.

ORDER OF SENTENCE.

Present: Sh.H.S.Rakkar, learned Additional P.P for the State.
Convict in person with counsel Sh.Navin Behl Advocate.

27. Heard the convict in person as well as his counsel and learned Additional P.P for the State on question of sentence. Convict has prayed for a lenient view on the ground that he is first offender and is the only bread winner of his family.

28. Considered plea of the convict and have gone through the record. The convict is of 25 years of age. On 03.07.2014 the Drugs Inspector upon inspection of premises of M/s Punjab Crockery, Phase-7, Mohali of accused Parvesh Kumar found him in possession of E-cigarette stocked and displayed in the said shop for sale and distribution. The convict failed to produce any valid drug sale licence. E-cigarette contains Nicotine in chemical form which is highly addictive and lethal. In today's society, the youth take up to such kind of addictive and potentially lethal products, and the offenders involved in promoting and selling such products should be dealt with sternly by law for the welfare of society. So, keeping in view of age, antecedents and character of the convict as well as gravity and nature of the offence committed by him, the convict is ordered to undergo the following sentence:-

Name of the convict	Convicted under section	Sentence imposed	In default of payment of fine.
Parvesh Kumar	27(b)(ii) read with Section 18(c) of the Drugs and Cosmetics Act,1940.	Rigorous imprisonment for three years and fine of Rs.One Lac.	Rigorous imprisonment for six months.
	28 read with Section 18A of the Drugs and Cosmetics Act,1940.	Rigorous imprisonment for one year.	

29. Both the substantive sentences would run concurrently.

The period of detention already undergone by the convict, if any, shall be

set of against the substantive sentence of imprisonment. Case property be disposed of under rules, after the expiry of period of appeal or outcome thereof, if any. File be consigned to the record room.

PRONOUNCED

DATED:07.04.2016.

(SARU MEHTA KAUSHIK)
ADDITIONAL SESSIONS JUDGE
SAS NAGAR-MOHALI.

Note: This judgment contains Page No.1 to 14 duly checked and signed.