

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17846 of 2015

Arising Out of PS.Case No. -23 Year- 2007 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

- =====
1. ANAND YASHWANT APTE S/O YASHWANT WASUDEO APTE, R/O A 102, CENTRE POINT CHS PANCH PAKHADI, THANE P.S. N AUPADA THANE DISTT. THANE (MUMBAI).
 2. AJAY GAMANLAL DESAI S/O GAMANLAL SHIVDAS DESAI R/O B-11102 RUNWAL TOWER L.B.S. MARG P.S. MULUND (W) DISTT MULUND (W) (MUMBAI).

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. SHRI ADIL HASAN TALIK, DRUG INDPECTOR, BHOJPUR, ARA R/O AGOSH EKBAL HASAN ROAD, BRAMHAPURA, MUZAFFARPUR.

.... OPPOSITE PARTY/S

=====

Appearance:

For the Petitioner/s : Mr. B.P. Pandey, Sr. Adv.
Mr. Pravin Kumar Sinha, Adv.
For the Opposite Party/s : Mr. J. Upadhyay (App)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 27-07-2015 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

Counter affidavit is also available on the record.

Petitioners has challenged order of cognizance dated 27.06.2007 passed by Additional Chief Judicial Magistrate, Bhojpur at Ara in Government Complaint Case No.23 of 2007, State Vs. Managing Director, M/s Nand Krishna Chemical Private Limited whereby and whereunder the learned Magistrate took cognizance of an offence punishable under section 17(c), 27 of Aousadhi and Angaraj act (Drugs and Cosmetic Act), 1940 as well as summoned the petitioners including others to face trial.

Learned counsel for the petitioners challenged the



order impugned solely on the ground of limitation and for that submitted that sample was taken on 28.10.2002, that being so whole complaint has been filed on 27.06.2007 the learned lower court would not have taken cognizance as well as summoned the petitioners and others, as the prosecution happens to be barred in the eye of law, in the background of having it shut down under the garb of statutory mandate prescribing punishment under Section 27(d) of the act minimum to be one year which may extend to two years along with fine not less than Rs.20,000/-. Furthermore, neither the order impugned suggest that limitation has been condoned nor the complaint petition discloses having such prayer.

At the other end, the learned Additional Public Prosecutor opposed the prayer and submitted that proper stage of application of proper section of penal provisions happens to be at the stage of framing of charge and not at the present juncture. Therefore, submission made on behalf of petitioner has got no legal daintiness.

In reply, the learned counsel for the petitioner submitted that limitation guides the order of cognizance and not the subsequent event.

Gone through the complaint petition (Annexure-1) as well as the order impugned. After going through the order impugned. It is apparent that there happens to be wrong application of Section incorporated under column no.5 of the complaint petition as under Section 17(c) of the Act punishable under section 27 as well as appropriate Section of IPC. When

the aforesaid event is taken together with the order impugned, it is evident that learned lower court had taken cognizance of an offence punishable under section 17(c) as well as 27 of the Drugs and Cosmetic Act. Nothing has been said about IPC. After going through the relevant Section, it is apparent that Section 17(c) defines the misbranded cosmetic and is not the penal provision. In likewise manner Section 27 is bifurcated under so many subheads prescribing different kind of sentence and that being so, at least the learned lower court should have gone through the relevant provisions of the Act because of the fact that there was seizure of ether which happens to be a drug and on account thereof, happens to be guided by Chapter-III more particularly Section 9 and is punishable under Section 13 of the Act.

At the present stage it does not look wise to suggest furthermore save and except perceiving that the order impugned happens to be outcome of mechanical approach. That being so, the order impugned is set aside. Petition is allowed. Matter is remitted back to the learned lower court for reconsideration including over limitation in accordance with law.

(Aditya Kumar Trivedi, J.)

PN/-

U		T	
---	--	---	--