

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.405 of 2013

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Mukesh Kumar Gupta son of Late Surendra Prasad Gupta, resident of Katrisarai, Police Station- Katrisarai, District- Nalanda, Vaidya (Medical Practitioner) of Ayurvedic and Unani System of Medicines.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Department, Government of Bihar, Old Secretariat, Patna.
3. The Director General of Police, Government of Bihar, Old Secretariat, Patna.
4. The Deputy Inspector General of Police, Nalanda.
5. The Superintendent of Police, Nalanda at Biharsharif.
6. The Officer- in- Charge Katrisarai, Nalanda at Biharsharif.
7. The Station House Officer, Katrisarai, Nalanda at Biharsharif.
8. The Drug Inspector, Rajgir.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Niranjana Kumar, Advocate

For the Respondent/s : Mr. A.C. to G.P.-VIII

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

18 05-01-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has been made accused in Giriyak P.S. Case No.158 of 2012 dated 24th September, 2012 registered for the offences punishable under sections 274, 275, 276, 417, 418, 419, 420, 467, 468, 470, 471, 328 and 120B read with 34 of the Indian Penal Code, sections 18(a), 18(c) 18-A, 18-B, 27(c) 27(b)(ii), 28, 28-A and 33 of Drugs and Cosmetics Act, 1940 (hereinafter referred to as “the Act of 1940”) as well as sections 3, 4, 5, 7 and 9-A of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

In the instant writ petition, the reliefs prayed for in paragraph-1 are as under:-

“1. That the petitioner by this writ petition craves indulgence of this Hon’ble Court for following relief(s) :-

i. For issuance of an appropriate writ(s), order(s), direction(s), setting aside the F.I.R. bearing Giriyak P.S. Case No.158 of 2012 dated 24.09.2012 (Annexure-3) so far it relation to the petitioner as the petitioner has unnecessarily been made an accused. Investigation is going on in the aforesaid P.S. Case No.158 of 2012.

ii. For an appropriate direction commanding the respondents authorities not make undue interference in respect of free enjoyment of practicing the petitioner as Vaidya of Aurvedic and Unani system of medicines for the treatment of ailing patients, who prefer consultation with the petitioner.

iii. To grant any other consequential appropriate relief(s) for which the petitioner may by found entitled to.”

The aforesaid FIR was registered on the basis of written report submitted by the Drug Inspector, Rajgir against several persons including the petitioner. According to the prosecution case, a huge quantity of adulterated medicines were seized from

the accused persons. It has been alleged that the petitioner and other accused persons have violated different provisions of the Indian Penal Code, The Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act of 1940) as well as The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

Learned counsel for the petitioner submits that the Act of 1940 is a complete Code in itself with regard to manufacture, sale and distribution of drugs and cosmetics and in contravention thereof, it has its own sets of authority which has been authorized to conduct inquiry into the matter including search and seizure or launch prosecution in respect thereof.

He has further submitted that in view of the provisions of section 4(2) of the Code of Criminal Procedure, the provisions as prescribed in the special statute under the Act of 1940 will have to be followed in derogation to the procedure as prescribed under the Code of Criminal Procedure.

He has further contended that under section 32 of the Act of 1940, no prosecution can be launched on the basis of a police report submitted under section 173(2) of the Code of Criminal Procedure. If no cognizance of the offence can be taken under the Act of 1940 on the basis of police report, institution of the FIR under section 154 of the Code of Criminal Procedure and investigation pursuant thereto under sections 156 and 157 of the

Code of Criminal Procedure would not be permissible.

In this regard, reliance has been placed by the learned counsel for the petitioner on the judgments of this Court in the matter of Hindustan Lever Ltd. Vs. State of Bihar and Ors. reported in 1997 BLJ 899 and an unreported order dated 12th April, 2013 passed in Cr. W.J.C. No.110 of 2013 (M/s Torque Pharmaceuticals Pvt. Ltd. and Another Vs. The State of Bihar and Ors.).

On the other hand, learned counsel for the State has contested the matter. A counter affidavit has also been filed on behalf of the State. Learned counsel for the State has submitted that the judgments relied upon by the petitioner would not apply to the facts of the present case. He has further submitted that there has been a sea-change in the Act of 1940. Since there had been wide spread reports regarding the easy movement and harmful consequences of adulterated and spurious drugs in the country, the Act of 1940 has been amended by The Drugs and Cosmetics (Amendment) Act, 2008 (hereinafter referred to as “the Act of 2008”) with effect from 10th August, 2009.

Learned counsel for the State has submitted that by the Amendment Act of 2008, every offence relating to adulterated or spurious drugs has been made cognizable. He has also submitted that by the Amendment Act of 2008, section 32 of the Act of 1940



has also been substituted. According to him, now there is a specific provision under Sub-clause (3) of section 32 which prescribes that a person accused of the act of 1940 can also be prosecuted under any other law for any act of omission which constitutes an offence. Learned counsel for the State contends that when special Act itself provides that a person can be prosecuted for the offences other than the Drugs and Cosmetics Act, there is no question that a person who has been made accused under the Act of 1940 cannot be prosecuted for other offences.

Lastly, learned counsel for the State has submitted that the judgment in the matter of Hindustan Lever Ltd. (supra) was passed prior to the amendments made in the Act of 1940 whereas in the case of M/s Torque Pharmaceuticals Pvt. Ltd. (supra) the amendments brought in the Act of 1940 by the Act of 2008 were not brought to notice of the Court.

Having heard the parties, I find force in the arguments advanced by the learned counsel for the State. Earlier the offences under the Act of 1940 were not cognizable but now every offence relating to adulterated and spurious drugs has been made cognizable. It is well settled that the police have got power to investigate a cognizable offence. Apart from that, by the Amendment Act of 2008 it has been made clear that a person accused of the offence under the Drugs and Cosmetics Act, 1940

can also be prosecuted under any other law for any act of offence which constitutes an offence. Accordingly, the special court has also been conferred with the power to try such other offences. Learned counsel for the State is right in saying that the judgment in the matter of Hindustan Lever Ltd. (supra) was passed prior to the amendments made in the Act of 1940 whereas in the subsequent judgment in the matter of M/S. Torque Pharmaceuticals Pvt. Ltd. (supra) this Court failed to take notice of the amendments made by the Act of 2008 which was notified in the Gazette of 10th August, 2009. I further find that the offences alleged under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and under the Penal Code are also cognizable offences.

In such view of the matter, I find no merit in the instant writ petition. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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