

**IN THE HIGH COURT OF JUDICATURE AT
PATNA**

Criminal Miscellaneous No.46362 of 2012

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Anil Kumar Singh, Son of Late Ram Lagan Singh, Resident
of Village-Sadaquat Ashram, P.S. Patliputra, District-Patna.
..... Petitioner.

Versus

1. The State of Bihar
 2. The Inspector, drugs and Cosmetics.
- Respondents/Opposite Parties.
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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Advocate.

Mr. Harsh Singh, Advocate.

Mr. Ravi Shankar Choudhary, Advocate.

For State : Mr. Ram Chandra Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

4 02-07-2015 Heard learned counsel for the petitioner and
learned counsel for the State.

2. This is a petition for quashing the order
taking cognizance dated 24.07.2012 passed by the
Chief Judicial Magistrate, Patna, for offence under
Sections 420, 27(B)II, 27(A), 27(D) read with
Section 36 (A C) of drugs and Cosmetics Act.

3. F.I.R. was lodged by the Drug
Inspector addressing to the Officer-in-Charge,
Pataliputra P.S. alleging therein that he raided the
premises of Anil Medical Hall and Murari Enterprises,
situated at Kurji Sadaquat Ashram and during raid



several irregularities found which has been reported in Form-16 and 17A. It is alleged that behind the two establishments Anil Medical Hall and Murari Enterprises there is illegal godown in which drugs were found in large scale. It has also been stated there is difference in measurement and description of the land mentioned as per licence regarding premises in which drugs were found. It has further been alleged that documents regarding said drugs has not been properly kept. It has also been alleged that there is some interpolation in Form 20 and 21 and hence he has stated that storage of drugs kept in premises without valid licence for sale and not keeping document of the drugs and kept the drugs beyond the area in which licence was granted is violation of Section 18 C, 18B and 18 A4 of Drugs and Cosmetics amendment Act. It has further been alleged that article seized and same of the drugs was taken.

4. On the written report of Drug Inspector, F.I.R. lodged bearing Pataliputra P.S. Case No. 196

of 2011, dated 22.09.2011 and police after investigation submitted charge sheet on which cognizance has been taken by order dated 24.07.2012.

5. Learned counsel for the petitioner has challenged the order taking cognizance on the ground that Drug Inspector under Drugs and Cosmetics Act has no power to institute F.I.R. and police has no right in filing F.I.R. for offences under Drugs and Cosmetics Act. It is further submitted that under Sections 22, 23 and 32 of Drugs and Cosmetics Act, the Drug Inspector is only competent to lodge a complaint and he is not entitle to file F.I.R. nor the police has jurisdiction to investigate into the offence and submit charge sheet and hence entire investigation and submission of charge sheet by the police is without jurisdiction and consequently order taking cognizance by the Magistrate on the police report is bad in law and relied upon decision reported in **1997 BLJ 899, 2009(1) PLJR 860 and 2006 (2) BBCJ (v) 418 as well as judgment of**

this Court passed in Criminal Writ No. 110 of 2013, dated 12.04.2013.

6. Having gone into provision contained under Section 32 of the Drugs and Cosmetics Act, it is apparent that no prosecution shall be instituted except by the Inspector, Gazetted Officer of the Central Government or a State Government, the person aggrieved and a recognized consumer association and hence it is only Drug Inspector or Gazetted Officer of Central Government or State Government the person aggrieved can institute the prosecution case by filing complaint and as the criminal prosecution can be filed by filing a complaint and it does not meant lodging of F.I.R. However, this view has been supported by decision reported in 1997 BLJ 899. However, contra argument that in view of provision contained under Section 23 (3) of the Drugs and Cosmetics Act provides punishment for three years, hence the police is competent to investigate the case taking into consideration the complaint. Considering both

provisions i.e. Section 23 and Section 32, it was held that prosecution can be instituted by filing the complaint by the Drugs Inspector and police has no jurisdiction to investigate into the offence. It is relevant to quote paragraph 8 of the **decision reported in 1997 BLJ 899** as follows;

"The contention raised on behalf of the petitioner is that the police has no jurisdiction to investigate into the offences committed under the Act. In view of Section 32 of the Act it appears to have force. Section 32 of the Act provides that no prosecution shall be instituted for any offence under the Act except by a Drug Inspector or by the person aggrieved or by a recognized consumer association whether such person is a member of that association or not. It is evident that prosecution can be instituted by Drug Inspector or by any person aggrieved by filing complaint before a competent court. The

police is not empowered to register any First Information Report and investigate the case so as to submit charge sheet under Section 173 of the Code of Criminal Procedure. The learned counsel for the opposite party no. 2 has contended that subsection (3) of Section 22 provides for punishment for three years as such the police shall be competent to investigate the case on the report of the Drug Inspector. It is difficult to accept this contention in view of the provisions contained in Section 32 of the Act. In my opinion, the prosecution can be instituted by filing complaint by the Drug Inspector and the police has no jurisdiction to register a First Information Report and investigate into the offence under the Act. The investigation by police in this case, therefore, is without jurisdiction and is liable to be quashed."

This view has been contend and applied in 2009(1) PLJR 860 and 2006(2) BBCJ V 418.

7. In Criminal Writ No. 110 of 2013, a Bench of this Court also took into consideration the decision reported in **1997 BLJ 899** as referred above. In Criminal Writ aforesaid, interpreted word **“criminal prosecution”** as enshrined under Section 32 as prosecution in court and hence held that a case can only be instituted by the competent Inspector and similar point arose in Criminal Misc. No. 808 of 1998 before Single Judge and the same was referred to the Division Bench and the Division Bench also disposed of the same taking similar view. Learned counsel for the petitioner further relied upon a decision reported in 2009(1) PLJR 860, wherein it has been held that the authority authorised under Special Act can file a complaint and the police has no jurisdiction to register a first information report and to investigate into offence and hence, the point raised, is not res-integra and in various decisions, this Court has taken similar

view that under the Drugs and Cosmetics Act, the Drug Inspector can only file complaint and no F.I.R. is entertained.

8. Learned counsel for the State however submits that F.I.R. lodged for offence under Section 420 I.P.C. can be entertained.

9. However taking into consideration that the allegation had been made by the Drug Inspector by filing written report and not by filing any complaint. Even taking into consideration the allegation, made in the complaint does not make out an offence under Section 420 of Indian Penal Code to institute a case. However to constitute an offence under Section 420 of Indian Penal Code, the ingredient required there must be inducement and in pursuance of that inducement, the person must have parted property dishonestly. There is neither any inducement as alleged nor parting of the property dishonestly by said inducement and hence there is no ingredient under Section 420 of Penal Code in the allegation, made in the F.I.R.

10. Having regard to the fact, **First Information Report is quashed and petition is allowed.**

(Gopal Prasad, J)

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