

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-15694 of 2015
Date of decision: May 18, 2015**

Rakesh Kumar Bhutani

.... Petitioner

versus

The State of Haryana and others

.... Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Gorakh Nath, Advocate, for the petitioner

Fateh Deep Singh, J. (Oral)

Rakesh Kumar Bhutani, the present petitioner has invoked the jurisdiction of this Court under the provisions of section 482 of Code of Criminal Procedure seeking quashment of FIR No. 208 dated 26.3.2011, Police Station Rohtak City, under sections 420, 274, 275, 276, 467, 471 IPC read with section 27 of the Drugs and Cosmetics Act, 1940 (in short, the Act) Annexure P/1 along with final report submitted by the police after the investigation.

Heard.

The essential factual background that has led to the filing of this petition is that on 26.3.2011 a raid was conducted at the residential premises of the petitioner at Rohtak and during which huge stocks of medicines etc. were recovered and that it was on the complaint of Sh. Rakesh Dahiya, District Drugs Control Officer FDA, respondent no. 2, this FIR in question was got registered and after the investigation, as is argued the offences under the IPC stood deleted and as per the report under section 173 (2) Cr.P.C. only offences under sections 16, 17, 18 and 27 of the Act remain.

The sole grouse of the petitioner who has sought to place reliance on Annexure P/1 and P/2 is that no FIR could be registered and that the same was in contravention of the provisions of section 18 of the Act and has cited **Rajeev Kumar vs State of Punjab, 1997(4) RCR (Criminal) 846** and **Satish Chand vs State of Haryana, 2003(4) RCR (Criminal) 851** in support of his submissions.

Appreciating the arguments it is well elicited in the FIR Annexure P/1 that a written complaint has been made by the District Drugs Control Officer (F.D.A.), Rohtak. State through Food and Drugs Administration, Haryana has taken remedial measures to regulate variety of functions including licensing, inspection of drugs, manufacturing and sales/distribution channels, quality control of drugs and cosmetics, drug pricing available and affordability of drugs in the State. Thus, in its endeavour to bring about more efficiency and control over the trade has

notified all SDCO's and DCO's as "Inspector" under this Act to perform statutory functions of sampling of drug and cosmetics and inspection of manufacturing/sale units in the State and who have been vested with powers of filing of criminal prosecution against the offenders under the Act and thus what is enunciated under the Drugs and Cosmetics Rules, 1945 and also empowers such an official to institute prosecution in respect of breaches of the Act and Rules thereunder. The definition of Inspector as propounded under the Act means and includes:-

- (e) (i) xxx xxx xxx xxx
- (ii) in relation to any other drug or cosmetic, an
Inspector appointed by the Central Government or
a State Government under section 21;

Section 21 of the Act enumerates that the Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be. The learned counsel representing the petitioner could not convince this Court when specific query was put if the complainant in this case was not covered under the definition of Inspector or not. With the amendment brought about in Section 32 of the Act with effect from 10.8.2009 it has brought about

change in the very wording and which ensures that :

(1) no prosecution under this chapter shall be instituted except by

(a) an Inspector or

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(d) xxx xxx xxx xxx

and its applicability to the State of Haryana with effect from in its application the word Judicial Magistrate has been added who is competent to take cognizance of offences and further more under sub Section 3 of Section 32 of the Act nothing is deemed to prevent any person from being prosecuted under any other law for any act or omission which constitute an offence against this chapter. Admittedly, as per the own arguments of the counsel for the petitioner offences under sections 420, 274, 275, 276, 467, 471 IPC were added at the time of lodging of the FIR and therefore, in view of the provisions enshrined in Section 155(4) of the Code of Criminal Procedure which lays down that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable and thus nothing can be find fault with in this process which was initially set into motion. Moreover, learned counsel for the petitioner could not show what material prejudice has been caused to the petitioner and even otherwise is a curable defect. Learned Magistrate also can take cognizance of these offences under the provisions of Section 190 of the Cr.P.C. and

even otherwise the applicability of the offences under the Act are a matter of trial and it is settled position of law that the trial court can add or delete any of the offences depending upon the evidence led before it. The cited ratios are factually at much variance from the case in hand as it was only purely under the provisions of the Act. FIR was lodged under the Act and not IPC which is not so in the present case and therefore, present prosecution by the competent official can set into motion the process of law. More-so, as has been brought to the notice of this Court the case is still at consideration of the charge and it is well within the rights of the petitioner to rake up all these issues before the learned Magistrate and none of the eventuality enshrined in the settled position of law laid down in the ratio of **State of Haryana v/s Bhajan Lal AIR 1992 SC 604(1)** stands attracted. Thus finding no illegality or perversity in the process already set into motion, does not calls for interference. The powers u/s 482 Cr.P.C. which needs to be exercised sparingly in rarest of rare cases cannot be put to exercise in such a circumstance. The petition is without any merit and is dismissed.

May 18, 2015
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(Fateh Deep Singh)
Judge