

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 9 of 2016

1. Bhagwat Mittal S/o Suresh Mittal, aged about 30 years, Occupation Shopkeeper, Mittal Medical Store, Bishrampur, Tah. - Surajpur, Revenue District – Surajpur, Civil District – Surajpur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Police Station Bishrampur, Revenue District – Surajpur, Civil District – Surajpur, Chhattisgarh.

---- Respondent

For Petitioner – Mr. Shrawan Agrawal, Advocate.
For Respondent – Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11/02/2016

1. Heard on admission.
2. Brief facts required for the instant Cr.M.P. are that on 14-06-2009 at about 1.15 p.m. one Chanchal Choubey reached to police of Vishrampur and lodged a FIR against the present petitioner. The police of Vishrampur registered crime No.118/09 under Sections 294, 506B, 323, 270 and 276 of the IPC and also under the provisions of Section 17A,17E read with Section 27 of the Durgs and Cosmetics Act, 1940 (in brevity 'the Act, 1940') and started investigation. During the investigation two note of Rs.100/- and Avil and Lupijesic injection seized from the petitioner and after conducting the entire investigation, charge sheet was filed before the Chief Judicial Magistrate, Surajpur, C.G. which is registered as Criminal Case No.844/09. On 14-07-2015, the Chief Judicial Magistrate framed charges against the petitioner under Sections 17A, E read with Section 27 of the Act 1940 along with Sections 294, 506 Part II and Section 323 of the IPC. The petitioner denied the charges and prayed for trial. Against the framing of the charges by the trial Court, the

petitioner had filed Criminal Revision No.28/2015 before the IIIrd Additional Sessions Judge, Surajpur, C.G. The learned revisional judge vide his order dated 03-10-2015 dismissed the revision petition and affirmed the order of the trial Court framing the charges against the petitioner. Against the said order the petitioner had filed the instant Cr.M.P. invoking the jurisdiction provided under Section 482 of the Cr.P.C. and prayed therein that the registration of FIR as well as the investigation by the police officer is violation of Section 32 of the Act, 1940. The same is illegal and without jurisdiction. No investigation should proceed and no any charge sheet should have been submitted under Section 173 of the Cr.P.C. No prosecution shall be instituted except by an Inspector or by the Gazetted Officer of the Central/State Government by general or special order or by the person aggrieved or by the recognized consumer association whether such person is a member of that association or not. The Investigating Officer does not come under the meaning of Inspector as defined under Section 3(e) of the Act, 1940 and also as the investigating Officer is not duly appointed under the provisions of Section 21 of the Act, 1940. The petitioner is having license to sell the medicine, he is authorized seller of the medicine. The prosecution can only be instituted by filing a complaint by the Drug Inspector, the police has no jurisdiction. The samples were sent for chemical analysis to the State FSL. The police did not know the limit laid down in the schedule of the Drugs and Cosmetics Act. Also grounds have been taken that by framing of the charges under the relevant provisions of the Act, 1940 and affirming the same by the revisional Court cannot be sustained and are liable to be quashed. The complainant is habitual criminal and he joined hands with police and falsely implicated the petitioner, he has a long criminal history. On the same day on the report of some Gopal Singh, police also registered a case against the father of the petitioner and his brother, it goes to show that the petitioner and his family are falsely implicated. Father of the petitioner submitted a written

report before police station. It is prayed that looking to the entire facts and circumstances and law, order dated 03-10-2015 and 14-07-2015 may be quashed in the interest of justice.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner submits that he is not disputing the legal provision as to the relevant provision of the Act, 1940 is triable by Magistrate. He is assailing the order passed by the Magistrate affirmed by the revisional Court on the ground that as per provisions of Section 32(1) of the Act, 1940 only it is Inspector who can institute regarding the prosecution for the cognizance of the offences. The word 'Inspector' is well defined under Section 3(e) (ii) of the Act, 1940 and also with Section 21 of the Act, 1940, only the Inspector can carryout the search and seizure but in the present case as search and seizure was not conducted by the Inspector as defined in the Act, 1940, there is violation of Section 32 of the Act, 1940. Learned counsel further submits that aggrieved person as mentioned in Section 32(1)(c) of the Act, 1940 can only file a complaint case before the Court of Magistrate under the provisions of Drugs and Cosmetics Act, 1940, he cannot not lodge the FIR. As police conducted the entire investigation and the investigation was not conducted by any Inspector as per provisions of Section 21 of the Act, 1940, the investigation is liable to be quashed. The State police has no power under Section 22(2) of the Act, 1940. The alleged samples were seized from the complainant prior to the time of incident. Annexure-P/5 contains criminal antecedent of the complainant. As per Annexure -P/4 the petitioner is having licence to sell the medicines. Annexure-P/8 is regarding the report made by father of the petitioner. As per the said document at about 1.00 a.m. the incident took place which was reported to the police. Also on 12.45 p.m. one Gopal Singh Vidrohi lodged FIR against father, brother and the petitioner. Learned counsel would further submit that even after under the provisions of

IPC, if any cognizable offence is alleged to be committed, the same may be quashed if it appears a false case. From the petitioner the said Rs.200/- and drugs as mentioned in the seizure memo were seized, but, for the moment for purposes of argument the petitioner is not denying that fact, the seizure of Rs.200/- and the drugs cannot be held as illegal as the petitioner is already having a license to sell those medicines. Learned counsel would further submit that as per provisions of Section 22 (2) of the Act, 1940 provisions of Cr.P.C. is applicable under Section 94 of the Cr.P.C. and as there is no search and seizure on behalf of the Inspector as defined in the Act, 1940, the entire investigation is without authority of law. Hence, it is prayed that the FIR and the entire proceeding also the framing of the charges be quashed.

5. Learned counsel for the petitioner placed reliance on the matter of **Drugs Inspector & Anr. Versus Fizikem Laboratories Pvt. Ltd. & Anr.**¹ wherein it is held that Sildenafil citrate is an allopathic drug and the respondent did not possess license and very fact of selling this drug as one of the ingredients in Ozomen capsule and not displaying the name in the prescribed manner in the drugs will constitute an offence. Hence, Inspector appointed Under Chapter IV is competent to launch prosecution.

6. Learned counsel for the petitioner further placed reliance on the matter of **Manju Kumari and another Versus State of Bihar and others**² wherein the single Bench of Patna High Court held that – Search and seizure of misbranded medicines by office in charge of police station – No evidence to prove that search was made by drug inspector after obtaining search warrant – police official has got no jurisdiction to institute a case under the act – Clear violation of mandatory provisions under Section 22(2) and 32 – Search and seizure held to be illegal – Proceedings is wholly illegal and without jurisdiction.

¹ 2008 STPL(LE) 39872 SC

² 2006 STPL(LE-Crim) 25911

7. Learned counsel for the petitioner further submits that on the basis of above cited judgments, the entire proceedings before the trial Court may be quashed.

8. For the purpose of appreciation regarding admission of the present matter, the instant Cr.M.P., other documents adduced are perused.

9. Undisputedly, the petitioner conceded the fact that as per the relevant provision of the Act, 1940 the matter can be decided by a Magistrate. He had challenged the entire proceeding regarding the act of unauthorizedly investigation by the police official and on the basis of the other facts, i.e., seizure of two broken injection and syringe from the complainant prior to one hour from the time of incident.

10. From perusal of the entire facts, it goes to show that the FIR was lodged regarding the provisions to Section 294, 506B, 323, 270 and 276 of the IPC along with relevant provisions of the Act, 1940. As per provisions of Section 32 of the Act, 1940, it goes to show prosecution can also be instituted at the behest of person aggrieved. In the present matter allegedly the complainant is the person aggrieved, as per the allegations. On the entire facts he had lodged the FIR which is a mix of cognizable offence of the IPC and other offence of the Act, 1940. When there is a reporting of cognizable offence it shall be duty of police to investigate the matter under the relevant provisions of Section 156(1) of the Cr.P.C. From bare perusal of the entire material, it cannot be said that the investigation conducted by the police was beyond jurisdiction. On the other hand, for the purposes of instant petition, the petitioner had admitted that Rs.200/- and drugs as mentioned in the seizure memo have been seized from him, but he had not committed any illegality as he is having license to sell the medicines and Rs.200/- can very well be with the petitioner who is a shopkeeper. Here, the question is not regarding the sell of drugs without any license, the charges are to sell those drugs under the category of Section 17A

or 17E and Section 27 of the Act, 1940 forming offence. Though there are provisions for investigation for offence under the Act, 1940 but except for the seizure memo which is admitted for the moment, no any seizure or search were made in the shop of the petitioner and looking to the entire contents of the FIR and the authority given to police under the provision of Section 156(1) of the Cr.P.C., this Court is of the considered opinion that the Court below has not committed any illegality or impropriety for taking cognizance and also to frame the charges. By lodging the FIR the person aggrieved recorded the facts and prayed for adjudication. It shows prima facie that he was the person aggrieved and thereby the operation of Section 32 of the Act, 1940 is complied and it could not be said that any illegality committed by police in this behalf. So far as seizure of some broken drugs and syringe one hour prior to the time of incident is concerned, on this fact alone entire proceedings including the allegations for other offences also cannot be quashed and the same, if any, can be subject of appreciation and for the same in the trial the petitioner may get opportunity to explain or to get the benefit of that differences in the timing of the incident and timing of the seizure. So far as criminal antecedents of the complainant are concerned, even for the sake of moment if any person is having many criminal history earlier to the present incident, the present incident cannot be denied entirely of this basis. Also the FIR lodged by the other person at 12.45 p.m. on 14-06-2009 cannot be held prima facie that by joining hands with police the petitioner or his family members are falsely implicated.

11. So far as the cited case laws **Drugs Inspector & Anr. Versus Fizikem Laboratories Pvt. Ltd. & Anr.** (supra) and also **Manju Kumari and another Versus State of Bihar and others** (supra) are concerned, the present one is a case where the element of the incident and ingredients of the offences are mixed of cognizable and non-cognizable offence of the IPC and the Act, 1940;

whereas in both these cited cases they were on the different foundations. This is not a case where purely the offence under the Act, 1940 is investigated by police officer, on the other hand, police officer acted on a report of cognizable offence and so far as Section 22(2) of the Act, 1940 regarding search and seizure is concerned, as the same provision is applicable in the Criminal Procedure Code regarding investigation of other offence and also when there is no search and seizure but for Rs.200/- and drugs that too the search is admitted by the petitioner for sake of argument of present petition, it cannot be held that any procedural mistake committed by police for investigation of the FIR lodged before them.

12. Also from the perusal of the order passed by the revisional Court, I do not see any illegality or impropriety in it and also I do not see any scope for invoking inherent jurisdiction of this Court to quash the entire proceedings and charges framed against the petitioner. In the considered view of this Court, the instant petition has no substance and the same is liable to be dismissed. Consequently, the instant petition is dismissed at the motion stage itself.

13. The Cr.M.P. dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE