

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-40392 of 2015 (O&M)
Date of Decision: February 04, 2016

Abdul Aziz and another

...Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harkesh Manuja, Advocate
for the petitioners.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint case No.44/12 dated 07.03.2012 which has now been instituted as criminal complaint case No.16/15 dated 10.09.2015 under Section 18-A, 18-C read with Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and for setting aside the order dated 03.09.2015 passed by learned CJM, Panipat, whereby the case against the petitioners has been committed to the Court of learned Addl. Sessions Judge, Panipat, to face trial under Section 18-C read with Section 27(b)(ii) of the Drugs and Cosmetics Act and all the subsequent proceedings arising therefrom.

I have heard learned counsel for the petitioner and have

gone through the record.

From the record, I find that at the time of arguments, it is admitted that the complaint in which the accused have been summoned, has already been committed to the Court of Sessions and learned Addl. Sessions Judge, Panipat has already framed the charge in the case and the trial is pending and case is fixed for evidence of the prosecution, which means that cognizance has already been taken by the Court. The Court has found prima facie case against the petitioners and also the charges have been framed. It is also admitted that no revision has been filed against the order framing the charge.

Learned counsel for the petitioners argued that from the perusal of the complaint, no case is made out as the present petitioners are manufacturer of the product regarding which the sample has been taken. The copy of the complaint has been annexed as Annexure P-1. I have gone through the averments of the complaint. In this complaint, it is written that this Court in CWP No.14597 of 2007 in case Burning Brain Society vs. Union of India, vide order dated 20.07.2011, had directed the States of Punjab and Haryana to constitute Task Forces for monitoring of abuse of Nicotine in the interest of Health of citizens. In compliance of the directions of this Court, District Level Task forces were constituted by Commissioner, Food and Drugs Administration. It is also stated that on 25.10.2011, Drugs Control Officer, Rohtak along with police party went to the shop where accused No.1 and 2 were found managing the

said premises of accused No.3 and purchased the product labelled as Molasses Tobacco containing Nicotine, which was being sold for inhalation by using Hukahs and as such, labelling of said products did not carry Government-mandated health warnings describing the harmful effects of tobacco use. There was no information about toxic constituents and emissions of said tobacco products and there were no WHO FCTC compliant mandatory health warning labels on said products that were found labelled to contain 0.05 to 0.5% of Nicotine. These were purchased by the complainant and samples were sent to lab. It is also in the complaint that products in context are not articles of food because use of Nicotine in Food is prohibited and the manner of labelling and the form in which the product was being presented rendered the product to be covered under a licence which was mandatory for sale and manufacture of drugs as per provisions of the Drugs and Cosmetics Act, 1940 and Rules. It is further in the complaint that on 19.12.2011, investigators along with Mr.Pravin Kumar Modi, Drugs Inspector Food Safety and Drugs Administration, arrived at the premises of accused No.5 i.e. The Hookah Company, Moradabad. The identity of team members and purpose of visit were disclosed to accused No.4. After disclosing the identity and purpose of visit, sealed sample parcels that were collected by the complainant during raids at Hookah Bars were shown to and handed over to him for identification and confirmation. Accused No.4 identified and confirmed to have manufactured the aid Qehwa brand tobacco Molasses of Whisky Flavour, Kolkata Pan, Pan Salsa Flavour and

Arabian Delight Flavour by his firm accused No.5. It is also in the complaint that Nicotine containing products in context under the name Qehwa Tobacco Molasses were manufactured by accused No.5. Accused No.4 and 5 were asked to show the drug manufacturing licence and other documents. It is stated in the complaint that they failed to produce any drug manufacturing licence issued under The Drugs and Cosmetics Act, 1940.

Even before this Court, there is no document to show the issuance of licence under The Drugs and Cosmetics Act. It is also stated in the complaint that accused No.4 and 5 have contravened Section 18-C of the Act, which is punishable under Section 27(b)(ii) of The Drugs and Cosmetics Act, 1940.

At this stage, after the perusal of complaint, in no way, it can be held that no offence is made out. At this stage, it also cannot be held that filing of the complaint in question, amounts to abuse of process of law. No ground is made out for quashing the complaint in question.

Therefore, finding no merit in the present petition, the same is dismissed.

February 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE