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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-7400 of 2016 (O/M)
Date of decision : 1.3.2016

M/s Stallion Laboratories Pvt. Ltd. and another Petitioners

Versus

State through Senior Drug Controller Officer Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aman Bansal, Advocate, for the petitioners.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

Impugned in the present petition is the order dated 5.2.2015 (Annexure-P-2), passed by the learned Additional Sessions Judge, Kurukshetra, vide which in a revision, filed by the State, the order dated 17.9.2014, passed by the learned Chief Judicial Magistrate, Kurukshetra, dismissing the complaint in default, was set aside.

The short facts of the case are that the State through the Senior Drug Controller Officer, Kurukshetra, filed a criminal complaint under Sections 16, 17, 17-A and 17-B of the Drugs and Cosmetic Act, 1940, read with relevant Rules, against the present petitioners and some others. It comes out that on 17.9.2014, when the case was fixed for the appearance of the accused, none

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appeared for the complainant. Therefore, the complaint was dismissed in default by the learned Chief Judicial Magistrate, Kurukshetra, vide order dated 17.9.2014 for non appearance of the complainant. The said order was challenged by the complainant before the learned Additional Sessions Judge, Kurukshetra, by way of filing a revision petition, who without issuing notice to the accused, set aside the order dated 17.9.2014, passed by the learned Chief Judicial Magistrate, Kurukshetra.

The first grouse of the learned counsel for the petitioners is that the accused were not heard.

Admittedly, the accused were required to be heard in revision, preferred by the complainant. However, the accused, who are aggrieved by the order of the learned Additional Sessions Judge, Kurukshetra, being not heard, are heard by this Court. Therefore, the said requirement stands satisfied.

The further contention of the learned counsel for the petitioners is that under Section 249 Cr.P.C., the dismissal of complaint amounts to discharge and, therefore, only appeal lies.

I am of the view that the order dated 17.9.2014, passed by the learned Chief Judicial Magistrate, Kurukshetra, is wholly illegal. Section 249 Cr.P.C. applies only when the offence can be lawfully compounded or is not a cognizable offence. Both the conditions are not satisfied in this case. In this case, the case was

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filed by the State through the Senior Drug Controller Officer, Kurukshetra. The case was fixed for summoning of the accused and on one date, the complainant could not appear and the learned Chief Judicial Magistrate, Kurukshetra, rushed to dismiss the complaint, vide order dated 17.9.2014.

I am of the view that the learned Chief Judicial Magistrate, Kurukshetra, should have been sensitive enough in dealing with such complaint, filed by the State and only on the ground of non appearance of the complainant on one date, the complaint should not have been dismissed in default. The order dated 17.9.2014, passed by the learned Chief Judicial Magistrate, Kurukshetra, is wholly illegal and against the law and is required to be set aside even by this Court in the exercise of power under Section 482 Cr.P.C. Therefore, without going into the legality or otherwise of the order dated 5.2.2015 (Annexure-P-2), passed by the learned Additional Sessions Judge, Kurukshetra, the order dated 17.9.2014, passed by the learned Chief Judicial Magistrate, Kurukshetra, stands set aside and the learned Chief Judicial Magistrate, Kurukshetra, is directed to proceed with the complaint, in accordance with law.

Disposed of.

1.3.2016
sjks

(KULDIP SINGH)
JUDGE