

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10960 of 2017

Arising Out of PS.Case No. -167 Year- 2015 Thana -RAFIGANJ District- AURANGABAD

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1. Dr. Manoj Kumar Sharma,
2. Subodh Kr. Sharma @ Subodh Sharma, Both are son of Prahlad Sharma, resident
of Village- Dhol, P.S.- Kasma, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 21-08-2017

Heard both the parties.

Petitioners, by means of this application under section 482 of the Cr. P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the orders dated 11.05.2016 and 29.08.2016 passed by C.J.M., Aurangabad in Rafiganj P.S. Case No. 167 of 2015, whereby cognizance has been taken against the petitioners for the offences under section 28, 28(A), 27(b) (ii) and 27(B) of Drugs and Cosmetics Amendment Act.

The contention of learned counsel for the petitioners is that no offence against the petitioners is disclosed and the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. Further submission is that Annexure nos. P2



and P3 show that the entire allegations leveled against the petitioners are baseless and imaginary.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners/ and no ground for quashing the entire proceedings is made out.

From perusal of the materials available on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the petitioners. All the submissions made at bar relates to the disputed questions of facts, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. At this stage only *prima facie* case is to be seen in the light of the law laid down by the Supreme Court in cases of ***R.P. Kapur Vrs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vrs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vrs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vrs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283 and recently in A.R.C.I. Vrs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348.*** The submissions made by the learned counsel for the petitioners call for adjudication on pure questions of fact which may be adequately



gone into by the Trial Court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. Moreover, the petitioners have got a right of discharge through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the Trial Court. The prayer for quashing the order taking cognizance is refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
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