

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21182 of 2014

Arising Out of PS.Case No. -322 Year- 2011 Thana -PHULWARI District- PATNA

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1. Md. Abdul Sami S/o Md. Abdul Samad.
2. Md. Hashmatullah S/o Md. Abdul Samad.
3. Md. Neyamatullah S/o Md. Abdul Samad. All residents of Ekta Nagar,
P.S. - Phulwarisharif, Town and District - Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal

For the Opposite Party/s : Mr. Mayanand Jha(App)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

8 03-11-2017 Heard learned counsel for the petitioners and the

State.

This application has been filed against the order taking cognizance dated 19.10.2011 passed by learned Chief Judicial Magistrate, Patna, in Phulwarisharif P.S. Case No. 322 of 2011/Special-5/11 under sections 419, 420, 463, 464, 274 and 275 of the Indian Penal Code and sections 18(a), (vi), 18(a)(ii), 17(b), 18(c), 18(A), 27(d), 27(e), 27(b)(ii), 28(A), 26 read with sections 36(A) of the Drugs & Cosmetic Act 2008.

Heard Mr. Gautam Kumar Kejriwal counsel appearing on behalf of the petitioners and Mr. Mayanand Jha appearing on behalf of the State.

Mr. Kejriwal submits that the instant case is abuse of process of law even according to the FIR itself the Drugs Inspector



has not followed the minimum requirement as contemplated in Drugs and Cosmetic Act, 1940 which was Subsequently amended in 2008. He has drawn my attention to the inspection report which indicates that it is breach of the principle of natural justice. As per procedure required under the Drugs and Cosmetic Act, sample was collected by one Sweta Rani but from the FIR itself it is evident that Sweta Rani after collecting sample left for her residence and she has not taken steps as follow-up under the provision of Drugs and Cosmetic Act, for lab report of the collected sample and as such he submits that foundation of the instant case is indicative of the gross irregularity in collection of sample and lodging of FIR which is breach of provision of Drugs and Cosmetic Act. He submits that in the instant case the petitioners who are lessors of the lease premises have been made accused although they have absolutely no connection with the activities connected with the Drugs and Cosmetic Act and as such the petitioners cannot be fasten with any criminal accountability for any deeds or misdeeds of the license under the Drugs and Cosmetic Act.

Mr. Jha submits that with reference to the report received from the court below that in the instant case charges were framed on 16.7.2014 and as such in view of the subsequent development, the application has become infructuous.

Mr.Kejriwal in reply submits that the stage is



immaterial if from the record, it transpires that the authorities have committed gross irregularity in collection of sample and fasten accountability on the lessor who are not involved in any activities involving breach of provision of Drugs and Cosmetic Act, the court should exercise jurisdiction under section 482 of the Cr.P.C.

Mr. Mayanand Jha may be correct in his submission that after framing of charge the stage has undergone charge and as such in the absence of those materials the court should not exercise jurisdiction and pass any order at this stage. However, the court cannot ignore the ordeal of trial faced by the petitioners if there is no foundational fact to proceed against them.

There is substance in the submission of Mr. Kejriwal that in the instant case the Drugs Inspector who seized sample has not acted in accordance with law and if foundation of criminal case is based on such seizure, in that situation he cannot be compelled to face criminal trial. The case was registered way back on 2011. The charges were framed on 16.7.2014 more than three years has elapsed after framing of charges and till date not a single witness has been examined on behalf of the prosecution then he cannot be compelled to face trial which remained inconclusive even after more than three years of framing of charges.

Under the aforesaid circumstances, the court deem fit and proper to direct the court below to conclude the trial within a



period of three months from the date of production of this order.

It is made clear that the issue raised by Mr. Kejriwal as to the procedural departure in the matter of collection of sample and the proceeding against lessor having no concern with the activities under the Drugs and Cosmetic Act needs to be addressed by the court below, before concluding the trial.

Accordingly, this application is disposed of with liberty to the petitioner to make all such submission, which has been advanced before this Court and the court below is directed to consider those submission on its own merit and at the same time the court below will see that the trial, which is pending for the last more than three years, must be concluded within three months failing which the proceeding against the petitioner should be closed if witnesses are not coming fourth on behalf of the prosecution. It goes without saying that the petitioners will extend full cooperation in the trial.

(Anil Kumar Upadhyay, J)

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