

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19530 of 2014

Arising Out of PS.Case No. -186 Year- 2009 Thana -PIRBAHOR District- PATNA

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Yogendra Kumar Son of Sri Bindeshwari Singh Resident of Sheikhpura Bagicha, P.O- B.V. College, P.S- Shastri Nagar, Patna- 14, Proprietor M/S Satyam Distributors, Saraf Bhawan, Govind Mitra Road, Patna-4

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Dhananjay Kumar, Advocate

For the Opposite Party : Mr. Himau Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

2 20-06-2017 Heard both sides.

2. The petitioner has filed the present application under Section 482 of the Cr.P.C. for quashing the order dated 17.09.2009 passed by SDJM, Patna in Special Case No.06 of 2009 arising out of Pirbahore P.S.Case No.186 of 2009 whereunder cognizance for the offence under Section 420 of the IPC and Section 7 of the Essential Commodities Act was taken against the petitioner.

3. The facts in brief is that one Ashok Kumar Yadav, Drug Inspector, Patna filed a written report before Pirbahore police station alleging inter-alia that pursuant to a letter bearing no.220 (Ra Auo.Ni) dated 29.04.2009 issued by the Directorate of Drug Control Administration, Bihar, Patna, the Health Department constituted a team for inspection of the business premises of this



petitioner, known as Satyam Distributors, Saraf Bhawan, Govind Mitra Road, Patna. After inspection, a report was submitted and on that basis, the present case was lodged against the said firm M/S Satyam Distributor. As per inspection report, it is alleged that five drugs mentioned at sl.1 to 5 were supplied to the PMCH by the said firm on high price than the MRP fixed by the manufacturer. At the time of inspection, the nephew of the proprietor was also present but he refused to sign the inspection report and accept the copy of inspection report which amounts to making of obstruction during inspection and thus, he violated the provision of Section 22 (3) of the Drug and Cosmetic Act, 1940. The firm has sold the drugs above the rate than the MRP marked over the drug which contravene the provision of para 16 and 19 of the Drug (Pricing Control) order 1995 punishable under Section 7 of the Essential Commodities Act.

4. After registration of FIR, police investigated the matter and submitted final report on 10.09.2009 for the prosecution of the petitioner for the offence under Section 420 of the IPC and Section 7 of the Essential Commodities Act. The concerned Magistrate took cognizance of offence under the aforesaid Sections as per impugned order.

5. The learned counsel for the petitioner referring to the



annexures enclosed with the application, submitted that the main allegation against the petitioner is that he supplied drugs to Patna Medical College Hospital (in short 'PMCH') at the high prices i.e., more than the prices than the MRP fixed by the manufacturer. For the said charge a proceeding was initiated against the petitioner and his licence was also cancelled on -8.07.2009 by the State Drug Controller-cum-Chief Licensing Authority, Patna. The petitioner filed CWJC No.10789 of 2009 against the said decision, which was allowed and the petitioner was finally exonerated from the said charge and the order of cancellation of licence was set aside. The explanation of the petitioner was also accepted by the Drug Controller Bihar on 17.03.2010. As the allegation of charging more than MRP has not been established, violation of provision of Drug Price (Control) Order, 1995 does not arises. The learned counsel cited ruling reported in (1996) 9 SCC page 1 P.S. Rajya vs. State of Bihar wherein the Apex Court has held that departmental proceeding and criminal cases are instituted for the same set of charge and if in the departmental proceeding petitioner exonerated of the said charges, no useful purpose would be served by continuance of the criminal proceeding on the same very charge.

6. The learned APP on the other hand opposed the



submission but on fact he concedes that the petitioner has been exonerated of the same charge by the department.

7. Having considered the submission of both the parties and on perusal of relevant annexures, which are not in dispute, I find that the medicines cited at sl.no.1 to 5 were supplied on the rate which was quoted by the petitioner's firm and approved by the purchase committee of the PMCH constituted for the purchase purpose. In this regard tender inviting the suppliers was published in daily newspaper on 19.04.2008. The price quoted by the petitioner was found lowest by the purchase committee of PMCH and an order was placed in favour of petitioner to supply the drugs. The petitioner supplied the drugs as per approved rate and received the payment as per bills submitted by him. It further appears that during the supply of drugs, the manufacturer reduced the price. The petitioner was not aware of the fact and charged the price as per approved rate but no sooner such mistake was discovered by the petitioner, he himself under letter dated 03.04.2009 informed the Superintendent, PMCH and as per chalan dated 30.04.2009 refunded the difference amount to the tune of Rs.1,32,490/- to Govt. Treasury. The Drug Controller subsequently constituted a team which inspected the petitioner's firm on 02.05.2009. After submission of inspection report, the



petitioner was asked to submit show cause. Thus, it is manifest that the present criminal prosecution was launched against the petitioner after refunding of difference amount by him. The learned counsel referred circular no.700 dated 30.01.1985 issued by the Govt., whereunder the concerned officers have been directed to provide opportunity to the licensee to rectify the minor and technical omission which are simple and curable in order to minimize the litigation.

8. In view of discussions made in forgoing paragraphs, I am of the view that the present case is squarely covered by the decision of the Apex Court in a case of P.S.Rajya vs. State of Bihar (1996) 9 SCC 1 wherein Apex Court quashed the criminal proceeding holding that when is a departmental proceeding where evidence is to be gone into on basis of preponderance of evidence, the charge could not be established. No useful purpose would be served by continuance of the criminal proceeding on the same facts.

9. This criminal writ petition is therefore allowed and order dated 17.09.2009 passed by the court below in Special Case No.06 of 2009 is quashed.

(Sanjay Kumar, J)

B.Kr./-AFR

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