

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32130 of 2011

Arising Out of PS.Case No. -113 Year- 2008 Thana -Rajauli District- NAWADA

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1. Pankaj Kumar son of Sri Kanhaiya Lal Gupta, resident of Mohalla-Makhlauganj, K.P. Road Gaya, P.S.-Kotwali, District-Gaya.
 2. Anshu Kumar, son of Sri Ranjit Prasad, resident of Mohalla-Rajendra Path, Tel Bigha, P. S.-Kotwali, Distt. Gaya.

.... Petitioners

Versus

1. The State of Bihar
2. The Drug Inspector (Nawada) P.S. + Distt. -Nawada.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajeev Nayan, Advocate
For the Opposite Party no. 2 : Mr. Nawal Kishore Pd., Advocate
For the State : Mr. S M. Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2017

The present application has been filed for quashing the order dated 17.04.2010 passed by the Judicial Magistrate, Ist Class, Nawada, by which charges have been framed against the petitioners for the alleged offence under Sections 379, 411 and 420 of the Indian Penal Code and also under Sections 18 (c) , 27 and 28 of the Drugs and Cosmetics Act, 1940.

2. According to the prosecution case, medicines were seized after checking Maa Shanti Bus, the relevant vouchers relating to purchase and sale of some of the medicines meant for storage in freezer and some physician samples not meant for sale, could not be produced, thus violating the provisions of Drugs and Cosmetics Rules, 1945. Accordingly, F.I.R. was lodged on 03.09.2008 by the informant, being the Drug Inspector, and after investigation the police



submitted chargesheet on 01.11.2008, on the basis of which cognizance was taken under various provisions of the Indian Penal Code and Drugs and Cosmetics Act. After taking cognizance the case was transferred by the Chief Judicial Magistrate, Nawada, to the Judicial Magistrate, Ist Class, Nawada, for trial and by order dated 17.04 2010 charges were framed under Sections 379, 411 and 420 of the Indian Penal Code and Sections 18 (c), 27 and 28 of the Drugs and Cosmetics Act, 1940 against the petitioners.

3. Learned counsel for the petitioners submits that the prosecution of the petitioners is wholly unauthorized in law. At the outset, it is submitted that the offence under the Drugs and Cosmetics Act can be initiated only by filing a complaint before the competent court and the police has no power to investigate the matter pursuant to an F.I.R. being instituted for the alleged offence under the said Act.

4. Learned counsel appearing for the State as well as learned counsel appearing for opposite party no. 2 have appeared and have been heard.

5. Having heard the parties and on consideration of the materials available on record, this Court finds merit in this application. It is well settled that the Drugs and Cosmetics Act, being a special Act, would override the general provisions of the Code of Criminal Procedure. In the case of *Hindustan Lever Ltd. Vs. The State of Bihar & Ors. 1997(1) B.L.J. 889*, it was observed that the



authority authorized under a special Act can file a complaint and the police has no jurisdiction to register an F.I.R. for investigation into the offence under such special Act.

6. A Bench of this Court in Cr. W.J.C. no. 42 of 2006 had quashed the criminal prosecution launched by the police under the Drugs and Cosmetics Act as unauthorized. To this effect also a judgment of the Division Bench of this Court had been passed in Cr. W. J.C. no. 719 of 1998.

7. In the above view of the matter, this Court is of the opinion that continuance of criminal prosecution against the petitioners would amount to abuse of process of the Court and accordingly, the impugned order dated 17.04.2010 by which charges have been framed, and the complaint filed against the petitioners in G.R. Case no. 1239 of 2008, T.R. no. 881 of 2010 arising out of Rajauli P. S. Case no. 113 of 2008 are hereby quashed against the petitioners. The petition stands allowed.

(Vikash Jain, J)

sudip/-

AFR/NAFR	
Uploading Date	
Transmission Date	

