IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28224 of 2013

Arising Out of PS.Case No. -907 Year- 2009 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Surendra Kumar Singh S/O Late Sri Shivnarayan Singh Proprietor M/S Shiva Enterprises And M/S Shiva Sales, Chunauti Kuan, Phulwarishariff, Patna, Bihar.

.... Petitioners

Versus

1. The State Of Bihar.
2. The Drug Controller, Department Of Health and Services, Bihar, Patna.
3. The Drug Inspector, Patna, Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Avinash Kumar

For the Opposite Party/s : Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 13.08.2009 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 907 (c2) of 2009 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 18(a), (b) and (c) of the Drugs and Cosmetics Act, 1940, summoned the petitioners.

2. Heard both sides.

3. The Opposite Party No. 3 filed a complaint case on the file of the learned C.J.M alleging inter alia that on 07.01.2009, he made a surprised inspection of the premises of M/s Shiva Enterprises

and M/s Shiva Sales, Chunauti Kuan, Phulwarishariff, Patna Bihar belonging to the petitioner. The petitioner neither produced the manufacturing licence nor the copy of the application for renewal of the licence. The manufacturing chemist and analytical chemist were absent from the business premises. In course of inspection, he did not find any record and register. He further found 540 packets (250 gm. Nett.) of cotton rolls and 660 x 25 pcs. of MH I.V. Set manufactured by Hutch Surgical. The petitioner has thus violated different provisions of Drug Rules. The learned Magistrate took cognizance of offence and summoned the petitioner.

4. The learned counsel for the petitioner submits that after inspection made by the Opposite Party No. 3, a show cause was issued to the petitioner to which the petitioner replied on 22.01.2009. The licence No. 1458 of 2000 relating to manufacturing of non biological medicines, licence No. WHQ-161/2007 and WHQ-161A/2007 relating to Drugs business of the firm of this petitioner was cancelled with immediate effect. The order of cancelling the licences were challenged by the petitioner before the Minister of Health and Family Welfare-cum-Appellate Authority, Bihar Patna. The Appellate Authority heard the matter and allowed the appeal by order dated 28.08.2009. The petitioner was granted licence by the Chief Licensing Authority, Bihar. The items, which were seized from

the premises are the cotton and MH I.V. Sets manufactured by M/s Madhuri Surgical, Maunath Bhajan (U.P) and Hutch Surgical. The cotton and suffusion set are neither drug nor a biological item and so, provision of Drug Act or Rules do not apply. The premises of the petitioner was inspected on 07.01.2009, but the complaint case was filed after more than seven months i.e. 17.08.2009, which shows that the malicious prosecution of the petitioner. The licensing authority for the alleged offence had already punished the petitioner by cancelling the licence, which on appeal was set aside by the Appellate Authority. The criminal prosecution of the petitioner in this view of the matter is also bad and not sustainable in law. The learned C.J.M without applying judicial mind has taken cognizance and so, the same is fit to be quashed.

5. The learned APP for the State opposed the submission.

6. On perusal of complaint petition and the documents, which are annexed with the application, I find that the Opposite Party No. 3 conducted raid at the premises of the petitioner on 07.01.2009. After passing over more than seven months, he filed the complaint petition on 17.08.2009 without explaining any reason. The cotton and MH I.V. Set seized from the premises of the petitioner are not the drug or any biological items. All the licences of the petitioner were cancelled by the licensing authority against which the petitioner filed

appeal before the Minister of Health and Family Welfare-cum-Appellate Authority Bihar Patna, which was allowed on 28.09.2009. The period of cancellation of licence was converted into the period of suspension of licence. Thereafter, the petitioner was granted licence with respect to his aforesaid business. I further find that the penal provision for the above offence has been provided in Rule 66 of Drugs and Cosmetics Rule 1945, whereunder the licensing authority has power to cancel and suspend the licences in the event of non compliance of the conditions of the licence by the licensee. In view of above provision, the criminal prosecution of the petitioner appears to be an abuse of process of Court.

7. In this regard, the learned counsel for the petitioner cited ruling reported in 1996(1) PLJR 533 and 2000 (3) PLJR 266, which relate to an offence under Income Tax Act. The criminal prosecution of an assessee was quashed in view of the fact that the prosecution under Section 271(1)(c) was dropped by the Assessing Authority of Income Tax Department. In the case of Kanshi Ram Wadhwa Vs. Income Tax Officer, Kurukshetra, reported in (1981) 145 Income Tax reports 109, the Punjab and Haryana High Court has held, taking into consideration the decision rendered by the Supreme Court in the case of Uttam Chand and others Vs. Income Tax Officer, Central Circle, Amritsar (reported in (1982) 133 Income Tax reports 909), that once a

proceeding under Section 271(1) (c) of the Act has been dropped, there is no question of criminal prosecution against the assessees. In the case in hand, I find that a proceeding was initiated and the licenses of the petitioner were cancelled. The petitioner filed appeal before the appellate authority, which was allowed. In view of penal provision provided in Rule 66 of Drugs and Cosmetics Rule 1945, the criminal prosecution of the petitioner after the order of Appellate Authority restoring the licence of the petitioner appears not sustainable.

8. Having regard to the above legal position as noticed above, this application is allowed and the order dated 13.08.2009 passed by the learned Chief Judicial Magistrate, Patna is quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
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