

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.20002 of 2014**

Arising Out of P.S.Case No.472 Year- 2013 Thana -PIRBAHOR District- PATNA

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SURESH PRASAD Son of Late Keshav Ram residnet of Mohalla - Malahi Pakari  
, P.S- Kankarbagh, Distt- Patna, at present M/S DEO PHARMA, Rahui Market  
Govind Mitra Road, P.S. Pirbahore, Distt- Patna

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance :**

For the Petitioner : Mr. Ram Shankar Das, Advocate  
: Mr. Abhay Kumar, Advocate.  
For the Opposite Party : Mr. U.L.Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 04-09-2017**

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 10.02.2014 passed by Additional District Judge-VII, Patna in Special Case No.79 of 2013 arising out of Pirbahore P.S.Case No.472 of 2013 whereby and whereunder the court below took cognizance under Sections 420 of the IPC, Section 27(d) of Drugs and Cosmetic Act and 21(c) of the Narcotic Drugs and Psychotropic Substance Act (NDPS Act) against the petitioner.

**2.** Heard and perused the record.

**3.** One Yaswant Kumar Jha, Drug Inspector, Patna submitted a written report to the SHO of Pirpahore police station on 26.10.2013 stating therein that in the light of direction of State Drug Controller, Bihar, Patna he along with inspecting team inspected the business premises of this petitioner, namely, Deo Pharma, Rahul



Market, Govind Mitra Road, Patna-4. In course of inspection, this petitioner did not produce the bills related to purchase and sale of certain medicines. The owner produced the stock statement which was not satisfactory as per stock of his shop premises. The team further found several irregularities in stock as well as register maintained by his Firm. The petitioner has thus cheated and violated the provisions of Drugs and Cosmetic Act and is liable for prosecution under Section 27(d), Drugs and Cosmetic Act and Section 8(c) of NDPS Act.

4. Learned counsel for the petitioner submits that in view of Section 22 of Drugs and Cosmetic Act, 1940, the institution of the FIR of the present case is without jurisdiction. The offences under Section 420 IPC, 27(d) of Drugs and Cosmetic Act and 21(c) of NDPS Act are not attracted in the background of the allegation made in the FIR. It has been further submitted that the police is not empowered to register any FIR under the Act 1940 and to investigate the case and submit chargesheet under Section 173(2) of the Act. The present case has been lodged with wrong allegation without considering the relevant provision of the Drugs and Cosmetic Act. The learned Magistrate took cognizance of offence on the basis of police report without applying judicial mind and so the impugned order is fit to be quashed. In support of his contention he cited a ruling reported in 2015(3) PLJR 661 and 1997 BLJ 899 Hindustan Lever Ltd. Vs. The State of Bihar and Others.

5. The learned APP for the State on the other hand



submitted that the prayer of the petitioner made in quashing application is not maintainable in view of the fact that the allegation made in the FIR do constitute a cognizable offence and, as such, the order taking cognizance on the basis of police report do not require any interference. The inspecting team inspected the business premises of the petitioner and found irregularities in maintaining the register of the Firm. The inspecting party prepared inspection report and lodged FIR, which prima-facie constitute an offence as stated above.

6. On perusal of FIR, I find that the present FIR was lodged by Drug Inspector on the basis of which the police registered the case and after investigation submitted chargesheet against the petitioner. The learned Magistrate finding prima-facie case took cognizance as stated above.

7. In *Hindustan Lever Ltd. v. The State of Bihar* (supra) relied upon by the petitioners, a Bench of this court held in paragraph 8 as under:-

“8. The second contention raised on behalf of the petitioner is that the police has no jurisdiction to investigate into the offences committed under the Act. In view of Section 32 of the Act it appears to have force. Section 32 of the Act provides that no prosecution shall be instituted for any offence under the Act except by a Drug Inspector or by the person aggrieved or by a recognized consumer association whether such person is a member of that association or not. It is evident that prosecution can be instituted by Drug Inspector or by any person aggrieved by filing complaint before a competent court. The police is not empowered to register any First Information Report and investigate the case so as to submit charge sheet under Section 173 of the Code of Criminal procedure. The learned counsel for the opposite party no. 2 has contended that Sub-section (3) of Section 22 provides for punishment for three



years as such the police shall be competent to investigate the case on the report of the Drug Inspector. It is difficult to accept this contention in view of the provision contained in Section 32 of the Act. In my opinion, the prosecution can be instituted by filing complaint by the Drug Inspector and the police has no jurisdiction to register a First Information Report and investigate into the offence under the Act. The investigation by the police in this case, therefore, is without jurisdiction and is liable to be quashed.”

8. The correctness of the ratio laid down in the above case was doubted by a Bench of single Judge of this Court and so the matter was referred to a Division Bench for adjudication by order dated 22.1.1998 which reads as under:

***“There is nothing in Section 32 of the Act to show that police shall not institute and investigate the case and it is only there under Section 32 of the Act that no prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or a recognized consumer association whether such person is a member of that association or not. In view of the wordings of Section 32 of the Act, in my opinion, this matter is required to be considered by a Division Bench. The case, therefore, is admitted for hearing by a Division Bench”.***

9. The Division Bench of this court after hearing the parties, by order dated 21.1.2011, answered the reference made by the learned Single Judge in the following terms:

***“.....It is held that the criminal proceeding initiated for contravention of section 27 of the Act on the basis of an FIR instituted by the Officer In-charge of any police station is legally not maintainable. No criminal proceeding could have been initiated for any offence relating to contravention of any of the provisions mentioned under Chapter IV of the Act unless it has been initiated by the persons authorized under section 22(sic 32)(1) of the Act. Under section 22(sic 32) of the Act, the Drug Inspector, aggrieved person or a member of any association are authorized for filing a complaint case. Only on the basis of a legally***



*instituted criminal proceeding, the criminal court is authorized to take cognizance and for prosecution of the accused. If it is not done, the entire criminal proceeding is bad, illegal and without jurisdiction. Such proceedings are liable to be quashed.*

**10.** In view of above discussions and the law laid down by a Division Bench of this court, I am constrained to hold that the FIR and investigation by the police in Pirbahore P.S. Case No.472 of 2013 dated 10.02.2014 are without jurisdiction and prosecution of the petitioner appears to be an abuse of process of the Court.

**11.** As a result, the order dated 10.0.2014 passed by Additional District Judge-VII, Patna in Special Case No.79 of 2013 and criminal prosecution of the petitioner is quashed and this criminal miscellaneous application is allowed.

**(Sanjay Kumar, J)**

B.Kr./-

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