

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42432 of 2014

Arising Out of PS.Case No. -27 Year- 2012 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

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Kumar Randhir Singh @ Randhir Kumar, Son of Kusheshwar Prasad, Resident of
Mohalla - Road No. 10, New Alkapuri, Gardanibagh, P.S. Gardanibagh, District –
Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rana Pratap Singh, Advocate.
Mr. Rajesh Kumar Singh, Advocate.
Mr. Dharmendra Kumar Singh, Advocate.

For the Opposite Party/s : Mr. Ajay Kumar-I, APP.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 03-01-2018

Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. Petitioner seeks quashing of the cognizance order
dated 24.07.2014 passed by the learned Sub Divisional Judicial
Magistrate, Patna inn Special Case No. 26 of 2012 arising out of
Economics Offence P.S.Case No. 27 of 2012 thereby taking
cognizance of offence against the petitioner under Sections 27(b)(ii),
28 and 28A of the Drugs and Cosmetics Act and Section 7 of the
Essential Commodities Act.

3. The short fact giving rise to the case is that Drug



Inspector (informant) on receiving secret information of dealing illegal trade of selling medicines without any licence, formed a raiding party and made raid at different places. One of the raiding parties raided the Prabhat Market Complex situated at Govind Mitra Road, Patna and from a portion of the marketing complex a black bag was found. The marketing complex owner Prabhat Kumar disclosed that this bag was brought by Randhir Kumar and on search physician samples were found kept in the said bag. During raid, one Abhay Kumar also reached there with a red bag in the marketing complex of Prabhat Kumar and on search physician samples were also recovered from his bag. On enquiry, he disclosed that this petitioner also has a shop in the market dealing in surgical instruments and that shop was sealed on that very day as the said shop was found closed, thereafter giving notice to him, shop was inspected but no medicine was found.

The police, after conclusion of investigation, finding no sufficient evidence, submitted final form against the petitioner but submitted charge sheet against rest other accused persons.

4. Learned counsel for the petitioner submits that there is no material against the petitioner, the so-called black bag was recovered from the possession of Prabhat Kumar as it was found kept in portion of the marking complex which is in his possession, the said



fact is disclosed during investigation; moreover, petitioner was not present there moreover this petitioner deals in surgical instrument having a shop at another place in the same marketing complex that was sealed by the prosecuting agency on the same day as the shop was closed but after giving notice, in presence of the family members of the petitioner, it was inspected but no medicine or any incriminating material was found from his shop. The police, after investigation, submitted final form finding no sufficient evidence against him but the learned Magistrate mechanically has taken cognizance in the matter against the petitioner. He further submits that impugned order does not reflect on what evidence he relied upon in order to differ with the opinion of the Investigating Officer. Learned counsel submits that none of the offences are attracted against the petitioner as *prima facie* ingredients are not found against the petitioner and there is no evidence at all at the investigation stage to indicate that he was engaged in selling of drugs without any licence and Sections 28 and 28A of the Drugs and Cosmetics Act (hereinafter referred to as the 'Act') also do not apply.

5. Learned counsel appearing on behalf of the State submits that Prabhat Kumar from whose possession black bag was recovered, disclosed that bag was kept by this petitioner.

6. Having considered rival submissions and on perusal of



record, the Court finds that the allegations as well as evidence collected during investigation do not make out *prima facie* case of selling drugs by the petitioner without licence as no such drug was found from his possession or any other incriminating material during investigation. The black bag was in fact recovered from the possession of Prabhat Kumar, who disclosed that the bag was brought by this petitioner; whereas while the raid was going on another accused Abhay Kumar also reached at the place with a red bag keeping in it physical samples for delivery to Prabhat Kumar. However, petitioner's shop of surgical instruments, was sealed immediately by the drug inspector as it was closed at that time thereafter it was inspected but no incriminating material or any medicine was found.

7. Offence under Section 27(b)(ii) of the Act reads as such:

“27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.- Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,-

(a) xxx xxx xxx

(b) any drug-

(i) xxx xxx xxx

(ii) without a valid license as required under Clause (c) of section 18, shall be punishable with imprisonment for a term which shall not be less than three years but which may



extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years and of fine of less than one lakh rupees.”

8. This offence is attracted when a person is found engaged in sale and production of medicines without any valid licence but no such evidence was collected during investigation showing *prima facie* case against the petitioner.

9. Section 28 of the Act also does not apply in the case of the petitioner because, as earlier stated, no evidence was collected showing even *prima facie* that he was engaged in selling drugs. The police also, after investigation, did not find evidence against him, so not sent up him for trial. The learned Magistrate has not even disclosed in the impugned order evidence collected during investigation suggesting *prima facie* evidence against the petitioner showing his involvement in the alleged offence despite he has taken cognizance of offence against the petitioner mechanically.

10. So in that view of the matter, entire criminal proceeding inclusive of the cognizance order dated 24.07.2014 passed by the learned Sub Divisional Judicial Magistrate, Patna in Special Case No. 26 of 2012 arising out of Economics Offence P.S.Case No.



27 of 2012 only with respect to this petitioner, is hereby quashed.

11. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2018
Transmission Date	11.01.2018

