

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42441 of 2017

Arising Out of PS.Case No. -413 Year- 2014 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Amit Kumar Son of Late Ram Babu Chaudhary Resident of Village-Kachhari Road Begusarai, P.S.-Begusarai, District-Begusarai. Proprietor of M/s New Medicine Centre, Kachhari Marg, Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mitu Bala, Inspector of Drug Begusarai-02, Wife of Dr. Rakesh Kumar, Resident of Mohalla-Rajeev Nagar, Road No. 07, P.S.-Rajeev Nagar, District-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikramdeo Singh, Adv.
For the State : None
Amicus Curiae : Nr. Amish Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-04-2018

Heard Mr. Vikramdeo Singh, learned counsel for the petitioner and Mr. Amish Kumar, learned Advocate appointed as amicus curiae. No one appears on behalf of the State even today.

2. The petitioner has licence to sell, stock or exhibit for sale or distribute by retail drugs specified in Schedule C and C/1 excluding those specified in Schedule X. On 28.06.2014 a raid was conducted in his shop and huge quantity of Corex Cough Syrup, Fortwin Injection and Ativan tablets were recovered pursuant to which an FIR was instituted inter alia under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short



‘NDPS Act’). On completion of investigation, the police submitted charge-sheet whereafter cognizance of the offence was taken by the learned Special Judge, Begusarai in connection with NDPS Case No. 04 of 2014 arising out of Begusarai Town P.S. Case No. 413 of 2014.

3. At the stage of framing of charge, an application under Section 227 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) was filed seeking discharge from the case, which was rejected by the court below vide impugned order dated 08.06.2017 passed by the learned Special Judge.

4. Assailing the impugned order dated 08.06.2017, Mr. Vikramdeo Singh, learned counsel for the petitioner submitted that the drugs alleged to have been recovered from the shop of the petitioner would neither come under the purview of the narcotic nor can be said to be psychotropic substance. He submitted that in absence of there being any material against the petitioner to have violated the conditions of licence granted under the Drugs and Cosmetics Rules, 1945 (for short ‘Rules of 1945’) framed under the Drugs and Cosmetics Act, 1940, the petitioner cannot be put on trial for the offences under the NDPS Act.

5. Per contra, Mr. Amish Kumar, learned amicus curiae submitted that Corex is a cough syrup sold by Pfizer company. Its active ingredients are chlorpheniramine maleate and codeine



phosphate. Chlorpheniramine maleate is an H1 blocking antihistamine. It relieves histamine induced allergic edema of respiratory mucosa. Codeine phosphate by its action on cough centre in the medulla helps reduce excessive frequency and intensity of cough bouts, which allows the patient to rest or sleep. Pentazocine is sold under the brand name of Fortwin. Among other, it is a painkiller used to treat moderate to severe pain. Lorazepam is sold under the brand name Ativan. It is used to treat anxiety disorder, trouble sleeping, active seizure including epilepticus, alcohol withdrawal and chemotherapy induced nausea and vomiting as well as for surgery to interfere with memory formation and to sedate those who are being mechanically ventilated. He submitted that Lorazepam is a Schedule H drug whereas Pentazocine and Chlorpheniramine maleate are schedule H1 drugs. He contended that the petitioner has annexed the licence granted to him to sell, stock or exhibit for sale or distribute retail drugs. A perusal of the same would make it clear that the licence granted to the petitioner is only for Schedule C and C/1 drugs. It has clearly been alleged in the FIR that the petitioner failed to produce any licence in respect of Schedule H drugs. He, thus, submitted that the seizure of drugs made from the shop of the petitioner would certainly come within the purview of narcotic drugs and psychotropic substances.



6. In reply, learned counsel for the petitioner submitted that even if it is presumed that the petitioner had no valid licence for Schedule H and H1 drugs, the same would not mean that he had violated any of the provisions of the NDPS Act.

7. I have heard learned counsel for the parties and perused the record.

8. From perusal of Rules 65 and 97 of the Rules of 1945, it would be manifest that Lorazepam sold under the brand name Ativan is a Schedule H drug whereas Codeine sold under the brand name Corex and Pentazocine sold under the brand name Fortwin are Schedule H1 drugs. They are also mentioned in the psychotropic substance schedule at serial nos. 27 and 56 respectively.

9. Schedule H and H1 drugs can only be supplied to licenced persons. It cannot be sold without a prescription and only the amount prescribed in the prescription has to be supplied after maintaining proper record including date and time of prescription.

10. Since the petitioner was not holding any licence for sale of Schedule H and H1 drugs and the drugs recovered from his shop find place in the Schedule of psychotropic substance at serial nos. 27 and 56, I see no merit in the contention of the petitioner that mere possession of those drugs would not make out any offence punishable under the NDPS Act. The possession of any drug, which is covered



under the schedule of psychotropic substance without any licence, would certainly attract offences punishable under the NDPS Act.

11. In that view of the matter, I see no merit in this application. It is dismissed accordingly.

12. Let a copy of the order be sent to the court below forthwith.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-04-2018
Transmission Date	12-04-2018

