

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10592 of 2018

Arising Out of PS.Case No. -125 Year- 2016 Thana -TATARPUR District-
BHAGALPUR

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Dr. Ashok Kumar Porwal @ Dr. Ashok Kr. Porwal, son of Late
Dr. Shiv Prasad Porwal, Resident at- Flat No. 3A, Ras Bihari
Apartment, Ramdas Path, Laheri Tola, Police Station-
Tatarpur, District- Bhagalpur.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Pathak

For the Opposite Party/s : Mr. Sanjay Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 01-10-2018

The petitioner in the present case is seeking setting aside of the order dated 18.09.2017 passed by learned Additional District & Sessions Judge – III, Bhagalpur in Criminal Revision No. 48/2017 arising out of Tatarpur P.S. Case No. 125 of 2016 corresponding to G.R. No. 3184/2016.

2. By the impugned order the learned Additional District & Sessions Judge – III, Bhagalpur has been pleased to reject the prayer of the petitioner to release the seized Homeopathic medicines and thereby has refused to interfere with the order dated 08.02.2017 passed by learned A.C.J.M. – 7th, Bhagalpur.

3. Learned counsel for the petitioner



submits that the petitioner is a registered Homeopath Doctor. He has got certificates to practice, however, on 08.09.2016, a search was made in his clinic namely, Asha Homeo and Skin Care Center, and in course of search, the Homeopathy medicines, which the petitioner had purchased and of which the petitioner is having all invoices and receipts showing purchase, have been seized alleging that the degree of the petitioner appeared to be forged and the medicines were being sold without valid license.

4. Learned counsel submits that a bare perusal of the joint inspection report which is part of the First Information Report would show that the Homeopathy medicines have been seized alleging that the petitioner was not having any license in terms of the provisions of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder.

5. It is however pointed out that in the inquiry report it is clearly stated that in course of inquiry the BHMS degree certificate and the certificate of internship were found correct. About the degree of Bachelor of Medicine in Biochemic



System it is only alleged that the said degree is not valid in the State of Bihar, but in course of inquiry, none of the degree of the petitioner could be found forged and fabricated. Petitioner has brought on record the Xerox copy of the degrees/certificates as Annexure-2 to the present application.

6. Learned counsel submits that by virtue of being registered Homeopath practitioner the petitioner was purchasing the homeopath medicines which he was using in course of prescriptions to the patients. The medicines are of different companies and of different powers. These medicines are not meant for sale rather these are used as mixture with the mother tincture which is spirit based. It is submitted that by no stretch of imagination it contains any alcohol.

7. Learned counsel further submits that the entire medicines are permissible to be kept in a dispensary of a doctor and none of the medicines are prohibited and sold through license or on permit. The petitioner has purchased the entire medicines from the open market through the valid receipts, if so required, the receipts/purchased bill will be



produced.

8. No one has appeared on behalf of the State. Even though the copy of this application was served on the State as back as on 25.01.2018, no affidavit in opposition has been filed on behalf of the State to controvert the statements made in the application. On record there is a copy of the police report dated 07.02.2017 which has been filed on the affidavit by the petitioner. The police report says that the Homeopath Medicines are kept in Malkhana and those will be an exhibit. It also states that the petitioner has produced Xerox copy of the receipts with respect to the medicines mentioned at serial nos. 1 to 108 and 111, 112, 113, 114, 115, 117, 118 to 164 and 165 to 244 of the seizure list which have been verified and have been found correct. It also states that the investigating agency has no objection if the court decides to release the medicines.

9. In the aforementioned circumstance when this court examines the order passed by the learned court below it is found that the only reason which has been prescribed for rejecting the application for release is that if the medicines are



released it will affect the case. At this stage the court finds that the learned court below is not correct in refusing to release the medicines. On perusal of the seizure list containing the description of the medicines with their batch number, serial number and expiry dates it would appear that while some of the medicines have already expired, some are likely to expire in near future and during pendency of the case and thereby the entire medicines will become useless. This court has seen the inquiry report from which it is apparent that so far as the BHMS certificate and internship certificate of the petitioner is concerned the same have been found correct. If this is the position, then, the petitioner being a registered Homeopathy doctor and practitioner from whose clinic the medicines have been seized is rightly looking for release of the medicines in accordance with law.

10. In the considered opinion of this court the interest of justice would be served by directing the learned trial court to direct release of the medicines mentioned at serial number shown in the police report in respect of which it has been stated



that the police has verified the receipts and have been found correct. All such medicines shall be released within a period of 15 days from the date of receipt/production of a copy of this order. But before the release the court below shall get prepared a Panchnama in form of photographs of the medicines with a list containing the name, serial number and batch number as per seizure list. It will be duly certified by the petitioner and the said Panchnama shall be kept on record of the trial court which may be used as secondary evidence in course of trial.

11. The petitioner has undertaken that he will not question the Panchnama so prepared as and when exhibited in course of trial. Such exercise be done by the court below within the aforesaid period.

12. As regards the other medicines mentioned in the seizure list of which the receipts have not been verified by the police, in case the petitioner produces the receipt with respect to those medicines, he will have liberty to file an appropriate application in the court below which will be considered by the court below in terms of the orders and observations hereinabove.



13. This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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