

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33305 of 2014

Arising Out of P.S. Case No.-62 Year-2012 Thana-
Laherimuhalla District-Nalanda (Biharsharif)

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1. Dr. Satish Chandra Sinha, son of Late R.P. Sinha, Resident of Village-Gabaspur, Police Station-Tharthari, District-Nalanda.
2. Gopal Prasad, Son of Late Shyam Sundar Prasad, Resident of Village-Parthu Muth, Police Station-Ekangarsarai, District-Nalanda.
3. Sonu (Lab Technician) @ Md. Mushrib Kabar, son of Late Md. Kamruddin, Resident of Village-Bihar, P.S.-Bihar, District -Nalanda.
4. Rajesh kumar, son of Suraj Pandit, Resident of Village-Gabaspur, P.S.-Tharthari, District Nnlanda.
5. Ashlam Alam, son of Md. Barik Mian, Resident of Village-Chainpur, Police Station-Bihar, District-Nalanda.
6. Santosh Kumar, son of Nagina Paswan, R/o-Salempur, P.S.-Tharthai, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Drug Inspector, Nalanda at Biharsharif.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.

For the State : Mr. Anil Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. ORDER



11 23-08-2018

The petitioners have challenged the order dated 26.11.2012, passed by learned Chief Judicial Magistrate, Nalanda in Laheri P.S. Case No. 62 of 2012 (G.R. No. 737 of 2012/Trial No. 221 of 2014), whereby cognizance has been taken under Sections 414 and 201 of the Indian Penal Code and Sections 27(b)(ii), 28 and 28-A of the Drugs and Cosmetics Act, 1940.

2. The subject F.I.R., dated 29.03.2012, was instituted on the basis of a written complaint by Rajesh Kumar Sinha, Drug Inspector, Nalanda alleging that on secret information, a raid was conducted in Sanjivani Hospital, Biharsharif, Nalanda. During the raid, it was found that the accused persons tried and made attempts to destroy the medicines. The raiding team could lay its hands upon Hologram of Bihar Government supply, which is not meant for sale generally. A Medical Hall also was found to be existing near the Doctors' Chambers without any valid licence. It was, therefore, alleged that without any valid licence, the accused persons were engaged in manufacturing medicines, thereby violating the various provisions of the I.P.C. and the Drugs and Cosmetics Act, 1940.

3. It has been submitted that petitioner No. 1 is a medical practitioner, who attended to the calls made



by the Administration of Sanjivani Hospital for providing treatment to patients admitted there. The petitioner Nos. 2, 3, 4 and 5 are stated to be the staff and employees of the aforesaid Sanjivani Hospital. It has further been submitted that only one of the accused, viz. Ram Pravesh Prasad is the owner of the Medical Hall and the Sanjivani Hospital.

4. The major contention raised on behalf of the petitioners is that with respect to any offence under the Drugs and Cosmetics Act, 1940, no F.I.R. could be lodged and only a complaint was entertainable. In that view of the matter, the entire prosecution, it has been argued, stood vitiated.

5. The Drugs and Cosmetics Act, 1940 was enacted to regulate the import, manufacture, distribution and sale of drugs and cosmetics. Section 3 of the Act deals with "definitions" and "drug" has been defined to mean and include all medicines for internal and external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations meant for repelling mosquitoes etc. The aforesaid definition further includes all substances, other than food, which is



intended to affect the structure of any function of the human body or for destruction of vermin or insects which cause disease in human beings or animals. The definition of drug is further inclusive of all substances intended for use as components of a drug including empty gelatin capsules and such devices which are meant for diagnosis or treatment. The definition, therefore, is all inclusive and the list could be increased by further notification in that regard by the Central Government, after consultation with the Board.

6. An "Inspector", under the Drugs and Cosmetics Act, 1940 means an officer appointed by the Central Government or the State Government under Section 33-G or 21 of the I.P.C.

7. The word "manufacture" also has been defined under Section 3(f) of the Drugs and Cosmetics Act, 1940.

8. Section 18 of the Drugs and Cosmetics Act, 1940 provides for "prohibition of manufacture and sale of certain drugs and cosmetics", which are specified by notification by the State Government in the Official Gazette.

9. The appointment of the Inspectors and their powers has been delineated in Sections 20, 21 and



22 of the Drugs and Cosmetics Act, 1940 which need not be reproduced here. All that is intended to be stated is that an Inspector, under the aforesaid Act, has a duty to inspect, take samples of any drugs and cosmetics and has been vested with the powers of search and seizure of any premises, vehicle, vessel or examine any record, register, document or any other material object, but subject to the provisions of Code of Criminal Procedure, 1973 with respect to search and seizure. Any willful obstruction by any person in the exercise of powers of such Inspectors has been made punishable with imprisonment which may extend to three years, or with fine, or with both.

10. Section 32 of the Drugs and Cosmetics Act provides that no prosecution under this Chapter shall be instituted except by an Inspector; or any Gazetted Officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or by the person aggrieved; or by a recognised consumer association whether such person is a member of such association or not. Section 32 of the Act, therefore, means that with respect to offences under the Drugs and Cosmetics Act, 1940 criminal law could be set in motion at



the instance of the Inspectors, the person aggrieved or by a recognised consumer association. The expression used in Section 32 of the Act is that "*no prosecution under this Chapter shall be instituted except by*". This, therefore, means that particular categories of persons have been designated for launching the prosecution. By what mode would such prosecution be launched, *i.e.*, by way of a complaint or by lodging F.I.R., has not been specified. However, Section 32 of the Act excludes "Police Officers" from the category of the persons who are entitled to launch a prosecution.

11. For sheer necessity in deciding whether an F.I.R. could be registered on the basis of a complaint/written report by a Drug Inspector, it would be relevant to examine Section 4 of the Cr.P.C. Section 4 of the Cr.P.C. reads as hereunder:-

4. Trial of offences under the Indian Penal Code and other laws.-(1) All

offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying



or otherwise dealing with such offences.

12. A bare reading of Section 4 of the Cr.P.C. makes it very clear that the Cr.P.C. would be applicable whenever any offence under I.P.C. or under any other law is being investigated, inquired into, tried, or otherwise dealt with. The offences under any other law also would be investigated, inquired into or tried in accordance with the provisions of the Cr.P.C., except in case of an offence under any other law, where the procedure prescribed thereunder is different than the procedure prescribed under the Cr.P.C.

13. In this context, it would be necessary to again examine certain provisions of the Drugs and Cosmetics Act, 1940. Section 36-A of the Act deals with offences which are to be tried summarily. Whichever cases in which the sentence is less than three years is to be tried summarily by a Court of Magistrate and not otherwise. Section 36-AB of the Act provides that all other offences entailing punishment for three years and upwards shall be tried before a Court of *Sessions* and if other offences under the Cr.P.C. are also tried along with the offences under the Drugs and Cosmetics Act, 1940 the same shall also be tried by the designated Court. Section 36-AC of the Act provides that certain offences under the



Drugs and Cosmetics Act shall be cognizable and non-bailable. For such offences which have been declared to be cognizable and non-bailable, a Police Officer can launch investigation in terms of the provisions contained in the Cr.P.C.

14. From a combined reading of the aforesaid provisions of the Drugs and Cosmetics Act, 1940 as well as the Cr.P.C., it becomes clear that under the Act, only specific categories of persons have been designated to launch prosecution and the prosecution could also be launched for other offences along with the offences under the Act which would be governed by the provisions of the Cr.P.C. With the recognition of some of the offences under the Act as cognizable, even the Police is entitled to launch the prosecution and investigate such offences.

15. The issue which has received contrariety of opinion is whether an F.I.R. could be lodged with respect to violation of anyone of the provisions of the Drugs and Cosmetics Act, 1940.

16. In *Hindustan Lever Ltd. Vs. State of Bihar and others*; 1997 (1) B.L.J. 899, a Single Judge of this Court held in paragraphs 8 and 9 of the judgment as follows:

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 provisions 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 police in this case, therefore, is without jurisdiction and is liable to be quashed.

(Emphasis provided)

9. In view of the above discussions the First Information Report and the investigation by the police on the basis of F.I.R. impugned in the present writ application



in so far as it relates to the present petitioner are quashed.

17. The aforesaid decision does not take into account the verdict returned in *Raghunath Bhagat & Anr. Vs. State of Bihar & Anr.*; 1991 Cr.L.J. 2054. In the aforesaid case, the Court was beset with a consideration whether the Police could submit a report under Section 173 of the Cr.P.C. after concluding the investigation on the basis of the F.I.R. with respect to the offences under the Drugs and Cosmetics Act, 1940. It was held by the Bench that there was no such bar under Section 32(1) of the Drugs and Cosmetics Act. Similarly, in *Om Prakash Agrawal Vs. S. Kullu, Addl. Dy. Commissioner, Singhbhum, Chaibasa & Ors.*; (1998) 3 B.L.J.R. 2148, the principle of *Hindustan Lever Ltd. (supra)* was not followed.

18. But the subsequent decisions of this Court have followed the principle enunciated in *Hindustan Lever Ltd. (supra)*.

19. In *Shankar Kumar Ghosh Vs. State of Bihar & Anr.* (Cr. W.J.C. No. 719 of 1998) and *Om Prakash Sah Vs. State of Bihar* (Cr. Misc. No. 808 of 1998), the principle laid down in *Hindustan Lever Ltd. (supra)* was followed and the prosecution was quashed. But in *Bablu @ Rajesh Kumar Vs. The State of Bihar & Anr.* (Cr. W.J.C.



No. 887 of 2013) and *Chotelal Singh Vs. The State of Bihar & Anr. (Cr. W.J.C. No. 899 of 2013*, a Single Bench of this Court *vide* order dated 27.06.2014, referred the matter to the Division Bench, subject to the permission of Hon'ble the Chief Justice. The aforesaid cases were listed before a Division Bench of this Court, comprising Hon'ble Mr. Justice Dhamidhar Jha and Hon'ble Mr. Justice Gopal Prasad (as they then were). The aforesaid Division Bench formulated certain questions and considering the seminal importance of those questions, referred the matter for being considered by a larger Bench, subject to the approval of Hon'ble the Chief Justice by order dated 12.08.2015.

20. Be it noted that one of the Hon'ble Judges, *viz.* Mr. Dhamidhar Jha (as he then was), sitting in Division Bench with Hon'ble Ms. Justice Mridula Mishra, had held in *Shankar Kumar Ghosh and Om Prakash Sah (supra)* that no F.I.R. could be lodged with respect to the offences under the Drugs and Cosmetics Act, 1940. He himself, later, doubted the aforesaid decision and referred the matter to a larger Bench.

21. From a plain reading of Section 32 of the Drugs and Cosmetics Act, it is clear that the prosecution could be launched only at the instance of particular



category of persons. The competence of those persons to launch prosecution has been laid down in Section 32 of the Act. The aforesaid section does not, however, refer to the mode of launching prosecution, which could be either a complaint or an F.I.R.

22. From the records of this case, it appears that the prosecution has been launched at the instance of the Drug Inspector, who is an authorised person to launch prosecution and his written complaint was the basis for registering an F.I.R. In the cases which have been referred to above where the prosecution has been quashed because of the offences being investigated by the Police, the prosecution was launched by the Police by registering the F.I.R.

23. In the present case, the allegations against the petitioners is also under some sections of the I.P.C. apart from the offences under the Drugs and Cosmetics Act, 1940 and, hence, in view of the provisions contained in Section 4 of the Cr.P.C. and Sections 36-A, 36-AB and 36-AC of the Drugs and Cosmetics Act, 1940 the proscription laid down in *Hindustan Lever Ltd. (supra)* shall not apply to the facts of this case.

24. There is yet another aspect to the matter. Whenever the Legislature intends to prescribe a



particular mode of launching prosecution, the same is clearly stated in the Statute. A ready reference can be made to the provisions contained in Section 142 of the Negotiable Instruments Act, 1881, which clearly provides that no Court shall take cognizance of any offence punishable under Section 138 of the Act *except upon a complaint in writing made by the payee or as the case may be, the holder in due course of the cheque*. Similarly, under the other acts also, wherever a specific mode of prosecution is intended, the same has been specifically stated. Section 55 of the Wild Life (Protection) Act, 1972 and Section 19 of the Environment (Protection) Act, 1986 are illustrative of the aforesaid proposition.

25. Following these principles, a Single Bench of this Court in *Shesh Narayan Singh Vs. State of Bihar & Anr. (Cr. Misc. No. 20018 of 2010)* has held that in *Hindustan Lever Ltd. (supra)*, the case was lodged only for the offences under the Drugs and Cosmetics Act, 1940, whereas, in the case in hand, offences under I.P.C. also were charged. Hence, the Bench held that the principle in *Hindustan Lever Ltd. (supra)* could not be pressed in that case.

26. In this case, after investigation by the Police on the complaint made by a Drug Inspector,



charge-sheet was submitted, whereupon cognizance has been taken. The grounds raised by the petitioners are more in the nature of their defence to the charge.

27. For the aforesaid reasons, I am not inclined to allow the prayer of the petitioners for quashing of the order of cognizance.

28. The petition is, thus, dismissed.

29. However, if so advised, the petitioners may raise all such pleas at the stage of framing of charge, which shall be decided on its own merits without being prejudiced by the fact that the present petition has been dismissed.

(Ashutosh Kumar, J)

Praveen-II/-

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