

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38545 of 2015

Arising Out of PS.Case No. -223 Year- 2014 Thana -PIRBAHOR District- PATNA

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1. Neeraj Kumar, son of Naresh Prasad,
 2. Dheeraj Kumar, son of Naresh Prasad,
 3. Naresh Prasad, son of late Bhola Sah, all resident of Naya Tola, Kajipur, Triloki Market, P.S. - Kadamkuan, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar,
2. The State Drug Controller, Bihar-cum-Licensing Authority
3. The Drug Inspector, Patna-II

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate
Mr. Abhay Kumar, Advocate

For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 27-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Pirbahore P.S. Case No.223 of 2014 instituted on 23.07.2014 (Special Case No.55 of 2014) for the offence under Section(s) 419, 420, 464, 465, 468, 471, 485, 486, 488, 406, 413, 414, 379, 274, 275, 276, 284, 120 Indian Penal Code, Section(s) 27(a), 27 (c), 27(b) (ii), 27 (d), 28, 28(A), 30(a), 30(b), 30(c), 36AC of the Drugs and Cosmetics Act, 2008, Section(s) 7 (i)(ii)/10A of the Essential Commodities Act, 1955, and Section(s) 22(b), 23(b), 21(b) of the NDPS Act, Section(s) 139, 142, 143 of the Income Tax Act,



and Section(s) 56(1), 56(4)(b) of the Bihar Sale Tax Act.

2. During pendency of this application, one Interlocutory Application bearing I.A. No.1862 of 2018 has been filed for quashing the order dated 06. 03.2018 passed in instant case i.e. Special Case No.55(A) of 2014 whereby the 1st Additional Sessions Judge, has taken cognizance against the petitioners for the offence under Section(s) 419, 420, 464, 465, 468, 471, 485, 486, 488, 406, 413, 414, 379, 274, 275, 276, 284, 120-B Indian Penal Code, Section(s) 27(a), 27(c), 27 (b)(ii), 27 (d), 28, 28(A), 30(a), 30(b), 30(c), 36AC of the Drugs and Cosmetics Act, Section(s) 7 (i)(ii)/10A of the Essential Commodities Act, 1955, Section(s) 22(b), 23(b), 21(b) of the NDPS Act, Section(s) 139, 142, 143 of the Income Tax Act and Section 56(1), 56(4)(b) of the Bihar Sales Tax Act.

3. It has been submitted that from conjoint reading of Section 22 and 23 of the Drugs and Cosmetics Act (hereinafter to be referred as “Act”), it will transpire that there shall be specified Drug Inspector for specified area, who will have jurisdiction and authority to conduct raid, search & seizure and filing of the complaint case, but in the instant case, Sri Yashwant Kumar Jha, the Informant, has not been authorized as Drug Inspector of the G M Road, Patna, in terms of Section 22 and 23 of the Act. Therefore, all



the actions including raid, search and seizure, seal and institution of First Information Report is illegal and cannot sustain in the eye of law.

4. It is also submitted that from perusal of Section 23(6) of the Act, it is clear that only Drug Inspector can lodge a complaint in the Court of the Judicial Magistrate and not to institute FIR at Police Station. In the instant case, by transgression in mandatory provision under Section 23(6) of the Act, the Informant has lodged the First Information Report at Pirbahore Police Station under different Sections of Indian Penal Code, Bihar Sales Tax Act, Income Tax Act, NDPS Act, and Essential Commodities Act for which the petitioners are not responsible and not liable for the alleged criminal liability. It is also submitted that in terms of Section 25(4) of the Act the Informant is not entitled for taking sample and sending sample to Government Analyst. The Informant, who is unauthorized Drug Inspector, has acted arbitrarily in violation of Section 23(4) (II) of the Act.

5. It is also submitted that none of the seized drugs contained contraband in excess of permissible limit and, hence, not a single Section of the NDPS Act, 1985, is attracted and cannot be imposed upon the Petitioners, which clearly reveals that the Petitioners have been implicated into a false and fabricated case.



Learned counsel for the Petitioners has further submitted that the Informant was not authorized to lodge a case in terms of Section 32 of the Act.

6. Section 21(1) of the Act express that the State Government may issue Gazette notification in the capacity of Official Gazette for appointment of Drug Inspectors for such fixed specified area as may be assigned to them by the Central Government or the State Government. Counsel for the Petitioners has submitted that 19 drugs recovered from the shop and godown of the Petitioner No.1 and 2 were sent to the Bihar Drugs Control Laboratory, Government of Bihar, Patna, for enquiry and giving expert opinion and out of 19, report of 18 drugs have already been issued by the said Laboratory, but no illegality has been found, which shows that due to malafide intention instant false and concocted case has been lodged.

7. It is also submitted that shop and godown of Petitioner Nos.1 and 2 were sealed illegally in connection with the instant case. Thereafter, Petitioner Nos.1 and 2 moved before the competent authority i.e. State Drug Controller, Bihar, Patna, who vide his order dated 29.06.2015, had directed the Informant to unseal the shop and godown of the Petitioner Nos.1 and 2.

8. Counsel for the State, on the other hand, has



submitted that from plain reading of Section 32 of the Act, it is apparent that there is nothing in the provision to show that prosecution can only be launched by filing complaint by the authorized Complainant before the competent Court and not otherwise. It is also submitted that in the instant case cognizance has been taken under the Indian Penal Code as well as NDPS Act and other Acts besides the Drugs and Cosmetics Act, on the basis of charge-sheet submitted by the police. Counsel for the State has further submitted that if the case relates to more than one offence and, at least, one is cognizable, the case shall be deemed to be cognizable case notwithstanding the facts that other offences are non-cognizable as provided under Section 155(4) Cr.P.C. The counsel for State has relied on unreported judgment of Jharkhand High Court passed in Cr. Revision No.595 of 2013 (**Arun Kumar Vs. State of Jharkhand**).

9. Counsel for the Petitioners has relied on the decision of our own High Court in the case of *M/s Torque Pharmaceuticals Pvt. Ltd. Vs. State of Bihar* reported in 2015(3) *PLJR 660* and *Hindustan Lever Ltd. Vs. The State of Bihar* reported in 1997 *BLJ 899* and argued that the learned Magistrate took cognizance on the basis of police report without applying judicial mind and, therefore, impugned order is fit to be quashed.



10. Counsel for the Petitioners has submitted that the Hon'ble Court in the case of *Hindustan Lever Ltd. Vs. The State of Bihar (supra)* has held that prosecution can be instituted by filing complaint by the Drug Inspector and the police has no jurisdiction to register a First Information Report and take up investigation into the offence under the Act.

11. Counsel for the Petitioners has further submitted that Division Bench of this Court by order dated 21.01.2011 passed in *Cr. W.J.C. No.719 of 1998 (Shankar Kumar Ghosh Vs. State of Bihar & anr.)* has held that 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.

12. Having heard counsel for the parties and looking into the impugned order as well as materials available on the record, it appears that written report was filed by the Informant, Yashwant Kumar Jha, Drug Inspector, Patna II, alleging that he conducted raid in view of Letter No.111 dated 09.07.2014, Letter No.115 dated 11.07.2014 issued by the Drug Controller, Bihar, Patna, at five different places relating to M/s Sri Hanuman Agency and M/s New Vaccine House, G M Road, Patna, and recovered huge quantity of medicine, ATM Card, Pass Book, Cheque Book, Rubber Stamp, Ink



remover, eraser, Inkipad, Ink blade, wrapper of the medicine, strips, carton box, original and counterfeit drugs, physician sample, expired drugs with trade stock. He also found huge quantity of the wrapper of expired medicine and false printed wrapper with price and manufacturing dates were fixed on the expired medicine. He also found many irregularities showing revenue loss to the government. The informant seized the aforesaid articles and prepared seizure list and submitted before the concerned Police Station. Accordingly, case was lodged for the offence under Section(s) 419, 420, 464, 465, 468, 471, 485, 486, 488, 406, 413, 414, 379, 274, 275, 276, 284, 120 Indian Penal Code, Section(s) 27(a), 27 (c), 27(b)(ii), 27 (d), 28, 28(A), 30(a), 30(b), 30(c), 36AC of the Drugs and Cosmetics Act, 2008, Section(s) 7 (i)(ii)/10A of the Essential Commodities Act, 1955, Section(s) 22(b),23(b), 21(b) of the NDPS Act, Section(s) 139, 142, 143 of the Income Tax Act and Section(s) 56(1), 56(4)(b) of the Bihar Sales Tax Act.

13. The police after investigation submitted charge-sheet in the case against the petitioners for the offence under Section(s) 419, 420, 464, 465, 468, 471, 485, 486, 488, 406, 413, 414, 379, 274, 275, 276, 284, 120-B Indian Penal Code, Section(s) 27(a), 27(c), 27 (b)(ii), 27 (d), 28, 28(A), 30(b), 30(c), 36AC of the Drugs and Cosmetics Act, Section(s) 7 (i)(ii)/10A of the Essential



Commodities Act, 1955, and Section(s) 22(b), 23(b), 21(b) of the NDPS Act, Section(s) 139, 142, 143 of the Income Tax Act and Section(s) 56(1), 56(4)(b) of the Bihar Sales Tax Act.

14. The Court below after looking into allegation in the written report and the materials available in the case diary has taken cognizance by order dated 06.03.2018 under various sections of Indian Penal Code, NDPS Act, Income Tax Act as well as other Acts as mentioned in the charge-sheet.

15. Section 32 of the Drugs and Cosmetics Act, 1940, reads as follows:

“32. **Cognizance of offences.**-(1) No prosecution under this Chapter shall be instituted except by-

- (a) an Inspector; or
- (b) any Gazetted Officer of the Central Government or a State Government authorized 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
- (c) the person aggrieved; or
- (d) a recognized consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session shall try any offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

16. From plain reading of this Section, it is apparent



that there is nothing in this provision to show that the prosecution can only be launched by filing the Complaint Petition before the competent Court and not otherwise. Section 28-B of the Act prescribes for penalty for manufacture, sale or distribution of any drugs or cosmetics in contravention of provisions of any notification issued under section 26-A of the Act. Section 26-A of the Act empowers the Central Government to regulate, restrict or prohibit the manufacture, sale or distribution of any such drugs or cosmetics, which is likely to involve any risk to human beings or animal etc., by notification in the Official Gazette.

17. In this manner, there is nothing in Section 32 of the Act prescribing that police has no jurisdiction to register the First Information Report and investigate into the case under the Act, and investigation by the police is without jurisdiction and prosecution can only be launched on the basis of Complaint Petition filed before the competent Court.

18. When the legislature intends to prescribe that the prosecution can be instituted only on the basis of the complaint, it clearly prescribes the same in the Act. For instance, Section 142 of the Negotiable Instruments Act, 1881, clearly prescribes as follows:

142.Cognizance of offences.-
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
(a) no Court shall take cognizance of



any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the same may be, the holder in due course of the cheque;

19. There are similar such provisions in other Acts also, such as Section 55 of the Wild Life (Protection) Act, 1972, Section 19 of the Environment (Protection) Act, 1986, other such legislations.

20. Section 195(1) (a) of the Cr.P.C. also provides as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

21. Section 22 and 23 of the Drugs and Cosmetics Act speak about power of Inspectors and procedure to be adopted by Inspectors.

22. The Division Bench of this Hon’ble Court in *Cr. W.J.C. No.719 of 1998 (Shankar Kumar Ghosh Vs. State of Bihar & anr.)* by order dated 21.01.2011 passed in the aforesaid case has



held that “....the legal issue was raised and referred to this Court, needed to be decided and, accordingly, 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(1) of the Act, Under section 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.”

23. Plain reading of Section 32(1) of the Act speaks that no prosecution under this Section shall be instituted except by Inspector or by persons aggrieved or by recognized association whether such person is a member of that association or not, rather, no Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter.

24. There is no mention in Section 32 of the Act that prosecution can only be launched on the basis of Complaint Petition



filed before the competent Court.

25. The only requirement under Section 32 of the Act is that no prosecution under this Chapter shall be instituted except by (a) an Inspector; or (b) any Gazetted Officer of the Central Government or a State Government authorized 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, (c) the persons aggrieved and (d) a recognized consumer association whether such person is a member of that association or not.

26. It further appears from the First Information Report that case has been registered under various sections of Indian Penal Code, NDPS Act and other Acts besides Drugs and Cosmetics Act.

27. The police after investigation has found the allegation true for the offences alleged and submitted charge-sheet under various sections of Indian Penal Code, NDPS Act and other Act besides Drugs and Cosmetics Act as mentioned in the charge-sheet.

28. The learned Judge has taken cognizance after looking into allegation in the written report and the materials available in the case diary.

29. Section 155(4) Cr.P.C. clearly speaks that if a



case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding, that the other offences are non-cognizable.

30. Section 156 Cr.P.C. describes, in detail, about the Police Officer's power to investigate cognizable case. Section 156(1) Cr.P.C. speaks that any Officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

31. In the instant case, from the First Information Report, it appears that written report was filed by the Drug Inspector, who was fully competent to launch prosecution in terms of provision of Section 32 (1) (a) of the Drugs & Cosmetics Act,1940.

32. The police in terms of Section 156 Cr.P.C. has properly investigated the case and submitted charge-sheet in terms of Section 173 Cr.P.C. after completing investigation of the case.

33. The learned Judge after looking into allegation in the written report and the materials available in the case diary after submission of charge-sheet has taken cognizance against the petitioner by order dated 06.03.2018.

34. Therefore, this Court does not find any illegality



in the impugned order passed by the learned Court below.

35. This application is, accordingly, **dismissed**.

36. The Court below will proceed with the case in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	17-07-2018
Uploading Date	29-09-2018
Transmission Date	29-09-2018

