

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45129 of 2012

Arising Out of PS.Case No. -8 Year- 2011 Thana -null District- GOPALGANJ

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1. Sunil Kumar Sah @ Sunil Prasad, son of Late Sudama Sah, resident of village Dhabwe, P.S. Gopalpur, District Gopalganj.
 2. Achhe Lal Sah @ Achhe Lal, son of Late Jogi Sah, resident of village Rajapur, P.S. Gopalpur, District Gopalganj.

.... Petitioners.

Versus

1. The State of Bihar.
2. Jitendra Kumar Sinha, son of Sri Ram Prit Prasad, Drug Inspector, Siwan, resident of Chankya Nagar, Kumharar, Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.

For the Opposite Party/s : Mr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 07-09-2018

Heard learned counsel for the petitioners and learned APP for the State. None appeared on behalf of opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed against the dismissal order dated 14.08.2012 passed by Ist Additional Sessions Judge, Gopalganj in Criminal Revision No. 533 of 2011 and order dated 06.09.2011 passed by the Judicial Magistrate 1st Class, Gopalganj in G.R. No.244/2011, Trial No.5071/2011, whereby the learned Magistrate has taken cognizance against the petitioners under Section 18 (c) 27 (b) (ii) of the Drugs and Cosmetics Act, 1940 and Amendment Act, 2008.



3. The factual matrix of the case is that on the basis of the written report of Drug Inspector, Siwan, namely, Jitendra Kumar Sinha the police instituted Gopalpur P.S. Case No.08 of 2011 under Section 18 (c) 27 (b) (ii) of the Drugs and Cosmetics Act, 1940 and Amendment Act, 2008 against the petitioners. On the basis of the said F.I.R., the case was investigated and on conclusion of the investigation the I.O. submitted chargesheet against the petitioners.

4. On perusal of the F.I.R., chargesheet and the case diary, the learned Magistrate took cognizance of the offence under Section 18 (c) 27 (b) (ii) of the Drugs and Cosmetics Act, 1940 and Amendment Act, 2008 against the petitioners vide order date 06.09.2011. Being aggrieved and dissatisfied with the impugned order the petitioners filed Criminal Revision No. 533 of 2011 which was dismissed by learned Ist Additional Sessions Judge, Gopalganj vide Order dated 04.08.2012.

5. It is submitted by learned counsel for the petitioners that under Section 32 of the Drugs and Cosmetics Act, 1940 and Amendment Act, 2008 (hereinafter in short referred to as the 'Drugs and Cosmetics Act') the Drug Inspector can file a complaint petition and the police cannot institute the F.I.R. and investigate the case and file charge-sheet. Hence no cognizance



can be taken under the Drugs and Cosmetics Act on the basis of charge-sheet submitted by the police.

6. On the other hand, learned APP vehemently opposing the prayer of the petitioners submitted that the learned Magistrate after perusing the F.I.R., chargesheet and the case diary, has rightly taken cognizance against the petitioners and the same is liable to be upheld and this application is liable to be dismissed.

7. From perusal of the record, it appears that the F.I.R. was lodged vide Gopalpur P.S. Case No.08 of 2011 under Section 18 (c) 27 (b) (ii) of the Drugs and Cosmetics Act, 1940 and Amendment Act, 2008 against the petitioners on the basis of the written report of the Drug Inspector, Siwan. The aforesaid case was investigated by the police and on conclusion of the investigation I.O. submitted chargesheet against the petitioners and on the basis of the said chargesheet cognizance has been taken against the petitioners by the learned Magistrate by the impugned order.

8. As per Section 32 (1) of the Drugs and Cosmetics Act, no prosecution under this Chapter shall be instituted except by an Inspector or 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 the person aggrieved or a recognized consumer association whether such person is a member of that association or not.

9. From the aforesaid provision, it is eloquent that the prosecution can be instituted by a Drug Inspector or by any person aggrieved by filing a complaint. Police is not empowered to register any first information report and investigate the case so as to submit the chargesheet under Section 173 of the Criminal Procedure Code. Therefore, investigation of the police and consequential taking cognizance of the case on the basis of the chargesheet submitted by the police after investigation is without jurisdiction and is liable to be quashed.

10. This court in the case of **Hindustan Lever Ltd. Vs. State of Bihar and Others** reported in **1997 BLJ 89** has ruled that prosecution can be instituted by Drug Inspector or by any person aggrieved by filing complaint before a competent Court and the police is not empowered to register any F.I.R. and investigate the case so as to submit charge sheet under Section 173 Cr.P.C. Investigation made by the police is without jurisdiction and is liable to be quashed. The Division Bench of this Court in Cr.W.J.C. No. 719 of 1998 decided on 21.01.2011



has ruled that no criminal proceeding could have been initiated for any offence relating to contravention of any of the provisions mentioned under Chapter IV of the Drugs and Cosmetics Act unless it has been initiated by the persons authorized under Section 22(1) of the Drugs and Cosmetics Act. Under Section 22 of the Drugs and Cosmetics 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. If it is not done, the entire criminal proceeding is bad, illegal and without jurisdiction. Such proceedings are liable to be quashed. This Court in the case of **M/s Torque Pharmaceuticals Private Limited and another Vs. The State of Bihar through the Department of Health and others** reported in **2015 (3) PLJR 660** has ruled that a case under Drugs and Cosmetics Act, 1940 can be instituted, only on a complaint by an Inspector or by such other persons as authorized thereunder, before a competent court of law. Under Section 32, no prosecution can be launched on the basis of a police report submitted under Section 173 (2) Cr.P.C. No notification has been issued under Section 32 (b), authorizing the officers (Gazetted) of the Police Department to initiate prosecution under the Drugs and



Cosmetics Act, 1940 and in absence of any general or special order made in writing in this regard the police officers are not competent to institute prosecution for the offences under the Drugs and Cosmetics Act, 1940.

11. In the facts and circumstances of the case, the cognizance order dated 06.09.2011 passed by the learned Magistrate, Gopalganj is hereby quashed and accordingly this application is allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2018
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