

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44278 of 2017

Arising Out of PS.Case No. -11 Year- 2016 Thana -LAXMIPUR District- JAMUI

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Rakesh Kumar, son of Vijay Kumar, resident of village- Matia, Police Station-
Lakshmipur, District- Jamui.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Anil Kumar Prasad, Aushadhi Nirikshak, Jamui-II, Police Station and District-
Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Prasad, Advocate
Mr. Kaushal 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 entire proceeding initiated against the Petitioner as well as order dated 22.11.20016 passed by the Judicial Magistrate, 1st class, Jamui, in Lakshmipur P.S. Case No.11 of 2016 by which the learned Magistrate has taken cognizance against the Petitioner for the offence under Section(s) 22(3), 27(a), 27(b), 27(c), 27(d), 28(a) of Drugs and Cosmetics Act and Section 7 of the Essential Commodities Act.

2. Counsel for the petitioner has submitted that Petitioner is running his business of medicine since 2004. His licence has been renewed from time to time in the name and style of Raj Medical Hall. The Petitioner is the proprietor of the Medicine Shop.



His licence was renewed up to 08.12.2019. No complaint was ever made or filed against the Petitioner for selling expired drugs.

3. Counsel for the Petitioner has further submitted that subsequent to raid conducted by Opposite Party No.2 (Informant) First Information Report was lodged against the Petitioner for the offence under Section(s) 274, 275 Indian Penal Code, 22(3), 27(a), 27(b), 27(c), 27(d), 28(a) of Drugs and Cosmetics Act, 1945 and Section 7 of the Essential Commodities Act. Notice was issued to the Petitioner after filing of the First Information Report. The Petitioner after receiving his show cause notice filed his explanation on 23.02.2016 before the Drug Licensing Officer, Jamui. The respondent authority had not considered the explanation and reply filed by the Petitioner and cancelled the licence of the Petitioner without giving any information and opportunity of hearing to the Petitioner, which was valid up to December, 2019.

4. The Petitioner filed CWJC No.6410 of 2016 against cancellation of his licence, wherein, the petitioner was directed to file an appeal before the Health Minister. The Petitioner filed appeal before the government, which is still pending, and as per direction of Hon'ble Court till disposal of the appeal, Petitioner was allowed to continue the running of medicine shop. The order taking cognizance is wholly without jurisdiction.



5. Counsel for the State has submitted that there is no illegality in the impugned order.

6. The prosecution case as alleged in the First Information Report by the Drug Inspector is that inspection was made in the shop of the Petitioner and during inspection it was found that some of the medicines, which were being sold by the Petitioner, had already expired and medicines were sold after deleting year of expiry. It is also alleged that Petitioner has violated Section 27 (a) of the Drugs and Cosmetics Act. It is further alleged that Homeopathic Medicine has also been sold in the shop of the Petitioner, which is violation of Section(s) 27(a), 27(c) and 27(b) of the Drugs and Cosmetics Act, and Section 7 of the Essential Commodities Act.

7. The police after institution of the First Information Report investigated the case and on conclusion of investigation has submitted charge-sheet against the Petitioner on 28.08.2016 for the offence under Section(s) 274, 275 Indian Penal Code, 22(3), 27(a), 27(b), 27(c), 27(d), 28(a) of Drugs and Cosmetics Act and Section 7 of the Essential Commodities Act.

8. The Court below after looking into allegation in written report and the materials available in the case dairy took cognizance against the Petitioner by the impugned order dated 22.11.20016 for the offence under Section(s) 22(3), 27(a), 27(b), 27(c), 27(d), 28 of Drugs and Cosmetics Act and Section 7 of the



Essential Commodities Act.

9. 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 persons 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 Sessions shall try an 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.”

10. As per Section 32(1) (a) of the Drugs and Cosmetics Act, Inspector is competent to institute the prosecution under this Act. First Information Report has been lodged by the Inspector for the offence under Drugs & Cosmetics Act, Indian Penal Code and also under Essential Commodities Act.

11. Section 155(4) Cr.P.C. lays down “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.

12. The Police Officer is empowered under Section



156(1) Cr.P.C. to investigate cognizable case without the order of a Magistrate, 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 provision of Chapter XIII.

13. In the instant case, police after completion of investigation has submitted report in terms of Section 173 Cr.P.C.

14. The Court below after looking into allegation in the written report and the materials available in the case diary after submission of charge-sheet has found *prima facie* case against the Petitioner for the under Section(s) 22(3), 27(a), 27(b), 27(c), 27(d), 28 of Drugs and Cosmetics Act and Section 7 of the Essential Commodities Act and has taken cognizance against the Petitioner under aforesaid Sections.

15. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

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

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

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	16-07-2018
Uploading Date	29-09-2018
Transmission Date	29-09-2018

