

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: October 16, 2018

1) CRM M-21131 of 2017 (O&M)

Neeraj Madan

... Petitioner

Versus

State of Haryana and another

... Respondents

2) CRM M-23403 of 2017 (O&M)

Neeraj Madan

... Petitioner

Versus

State of Haryana and another

... Respondents

3) CRM M-1184 of 2016 (O&M)

A.V. Patel

... Petitioner

Versus

State of Haryana and another

... Respondents

4) CRM M-42893 of 2015 (O&M)

A.V. Patel

... Petitioner

Versus

State of Haryana and another

... Respondents

5) CRM M-760 of 2016 (O&M)

A.V. Patel

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. G.S. Sawhney, Advocate,
for the petitioner.

Mr. R.K. Doon, AAG, Haryana

P.B. Bajanthri, J. (Oral)

1. By this common order, all the five afore-said CRM M-21131 of 2017, 23403 of 2017, 1184 of 2016, 42893 of 2015 and 760 of 2016 are being decided together as similar facts are involved in all the afore-said petitions. However, for brevity, facts have been taken from CRM M-21131 of 2017.

2. In the instant petition, petitioner has sought for quashing of complaint No. 84 of 2009 dated 12.08.2009, pending in the Court of Chief Judicial Magistrate, Kurukshetra, along with all subsequent proceedings arising therefrom.

3. Petitioner is authorised distributor of certain drugs who is a proprietor of M/s Kritika Marketing Company situated in 1187, Sector 17, Urban Estate, Jagadhri, District Yamuna Nagar (Haryana). The Drugs Control Department obtained certain samples of drugs on 30.11.2004 from petitioner and sent for test. Test report was available to the respondents on 21.10.2005 wherein it was found that drugs were not in accordance with prescribed form. Consequently, certain formalities were completed for the purpose of taking action in accordance with law and proceeded to file complaint before the Court of Chief Judicial Magistrate, Kurukshetra on 12.08.2009.

4. In support of the present petition to set aside the complaint, learned counsel for the petitioner vehemently contended that Section 32 of the Drugs and Cosmetics Act, 1940 (for short Act, 1940) has been amended

in respect of assigning jurisdiction to the Sessions Court while modifying the jurisdiction which was assigned prior to 12.08.2009 to the Judicial Magistrate. Thus, as on 12.08.2009 complaint is required to be presented before the Sessions Court, to that extent filing of complaint before Judicial Magistrate is without authority of law.

5. Per contra, learned State counsel submitted that cause of action accrued to the respondents in filing complaint would relates back to collection of sample as on 30.11.2004 which is the relevant date, competent authority to entertain the respondent's complaint was Magistrate in terms of Section 32 of Act, 1940. It was also submitted that cause of action even accrued on 21.10.2005 the date on which test report relating to the drugs was received by the respondents. Therefore, there is no infirmity in presenting the complaint before the Magistrate. Further, it was contended that even assuming that complaint is filed before incompetent authority, Section 460 of Cr.P.C. would assist in rectifying the irregularities. Therefore, petitioner has not made out a case to interfere with the complaint filed before the Judicial Magistrate on 12.08.2009.

6. Heard learned counsel for the parties.

7. Crux of the matter in the present petition is whether complaint filed before the Judicial Magistrate on 12.08.2009 under the Act, 1940 against the petitioner is in accordance with law or not?

8. Undisputedly, as on 10.08.2009, jurisdiction to present the complaint was vested with the Judicial Magistrate in terms of Section 32 of the Act, 1940. Whereas complaint was filed on 12.08.2009 before the Judicial Magistrate who ceased to be the competent authority under Section

32 of the Act, 1940 w.e.f. 10.08.2009. Therefore, it is not an irregularity, it would go to the root of the matter. In other words, Chief Judicial Magistrate, Kurukshetra cannot entertain the complaint in view of amendment of Section 32 of the Act, 1940. Presentation of complaint after 10.08.2009 before Judicial Magistrate is not a curable defects so as to take shelter under Section 460 of Cr.P.C. Thus, State counsel has not made out a case.

9. Supreme Court in the case of in the case of ***Dhanajaya Reddy vs. State of Karnataka*** reported in ***(2001) 4 SCC 9***, in para no.23 held as under:-

“23. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in State of U.P. v. Singhara Singh, AIR 1964 SC 358 (AIR p. 361, para 8) held:-

“A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.”

10. Supreme Court in the case of ***Director General, ESI and another vs. T. Abdul Razak*** reported in ***(1996) 4 SCC 708*** in para no.14 held as under:-

“14. The law is well settled that in accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is

authorised by express words or necessary implication.”

11. Accordingly, all the afore-mentioned five petitions are allowed. Complaints filed before Chief Judicial Magistrate are set aside. Reserving liberty to the official respondents to act in accordance with law. If complaint is presented before the competent court along with delay application, competent court may consider delay from the date of presenting complaint i.e. 12.08.2009 till disposal of the present petition would not be a hurdle to entertain complaint in view of Section 14 of Limitation Act, 1963.

October 16, 2018

vkd

**[P.B. Bajanthri]
Judge**

Whether reasoned / speaking : Yes

Whether reportable : No