

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-23552-2015(O&M)
Date of decision:-11.1.2018**

Vishal Dhuria and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Piyush Sharma, Advocate
for the petitioners.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. for quashing of FIR No.11 dated 7.2.2015 for the offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as *the Act*), registered with Police Station City, Jalalabad, District Fazilka along with all the consequential proceedings has been filed by petitioners – Vishal Dhuria, Vikas Dhuria and Rajan Kumar, all three of them being accused in the said FIR.

According to the petitioners, petitioners No.1 and 2, namely, Vishal Dhuria and Vikas Dhuria are real brothers running a wholesale medicine shop under the name and style of M/s S.V. Medicos, near Primary School, Basti Ram Garhia, Jalalabad West, District Fazilka

having a valid licence in accordance with the provisions of Drugs and Cosmetic Act, 1940 effective up to 29.1.2018; that petitioner No.3-Rajan Kumar has been working with petitioners No.1 and 2 as helper; that a false FIR No.11 dated 7.2.2015 for the offence under Section 22 of NDPS Act has been registered against the petitioners on the allegations that they have been selling intoxicant medicines and they were going to supply such medicines in heavy quantity at Grain Market, Jalalabad; that the FIR is shown to have been registered on the basis of secret information and as the police story goes subsequently a raid was conducted and petitioners were apprehended having in possession of 48000 FORTADOL tablets bearing batch No.15148 and 15149, 120 Alprazolam 0.5 tablets bearing batch No.1331, 100 Alprazolam 0.5 tablets bearing batch No.9773319, which fall under the ambit of NDPS Act.

Ms.Komal wife of petitioner No.1 submitted a representation to the police authorities and matter was inquired into in terms of which, no offence under NDPS Act is disclosed against the petitioners and the police story as set up is wrong.

The petitioner seeks quashing of FIR on the following grounds:

- (i) because the petitioners No.1 and 2 are having valid licence and authorized to purchase, sell and stock the recovered medicines under valid bills as mentioned in the report given by the Drugs Inspector, Fazilka during the course of investigation conducted by the Superintendent of Police (HQ), Moga (P-3).

(ii) because the recovered medicines had been purchased under valid bills (P-4 Colly) which is within accordance with the provisions of the Drugs and Cosmetic Act. Thus no offence under the NDPS Act, much less under Drugs and Cosmetic Act is made out.

(iii) because the story narrated by the police officials of police station City, Jalalabad has been found to be false during the course of investigation conducted by the Superintendent of Police (HQ), Moga that the petitioners were arrested on 7.2.2015 from the grain market, Jalalabad.

(iv) because the present FIR is a sheer abuse of process of law and no prima facie case under NDPS is made out against the petitioners thus the FIR deserves to be quashed.

Notice of the petition was given to the respondent – State, which has filed formal reply to the petition taking preliminary objections that petitioners have concealed the material facts from the Court and they are not entitled to any equitable relief; that as a matter of fact, the petitioners were found in possession of sedative medicines without any authority/licence and valid bill; that even after registration of the FIR, neither the petitioners - accused nor anybody else on their behalf had produced any bill pertaining to recovered medicines; that even during the investigation, no such bill was produced before the investigating agency, though in the bail applications moved by the petitioners before

Special Judge, Fazilka, they had pleaded that they were in possession of valid invoices/bills but details thereof were not given what to talk of produce of invoices/bills before the Investigating Officer, which seems that later on they had got prepared ante - dated bill to save themselves. On merits also these very contentions have been put forward while denying the assertions in the petition. It is consistent stand of the respondent that the recovered medicines fall within the ambit of NDPS Act. In the end, a prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties besides going through the case file and I do not find any reason to quash the FIR in question. The guilt of the petitioners shall be determined during the trial. They can raise all the pleas during the trial by Judge, Special Court, Fazilka. They would get an opportunity to cross-examine the prosecution witnesses and to adduce evidence in defence. Furthermore, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. It is only during investigation after registration of the FIR that the investigating agency probe the matter and find out as to whether any cognizable offence is disclosed against the accused.

Learned counsel for the petitioners has argued that merely due to the fact that challan has been filed in the Court is no ground to refuse quashing of FIR. In support of his contentions, he has referred to **Gian Chand Versus State of Punjab, 2003(2) R.C.R.(Criminal) 384** by a Co-ordinate Bench of this Court, **Lakhwinder Singh Versus State of Punjab, 2000(4) R.C.R.(Criminal) 104**, also by a Co-ordinate Bench of this Court. In support of his contention that no offence under NDPS Act

is disclosed, he has referred to authority **Sandeep Kaushal @ Sandeep Kumar Versus State of Punjab, 2013(26) R.C.R.(Criminal)503** by a Co-ordinate Bench of this Court.

However, I find that these authorities do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Finding no merits in the petition, the same stands dismissed.

11.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No