

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18579 of 2018

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Sunil Kumar Son of Late Sarju Prasad Gupta R/o-Arya Kumar Road, P.S.-
Kadamkuan, Dist.-Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Health Department,
Government of Bihar, New Secretariat, Patna
2. The State Drug Controller-Cum-Chief Licensing Authority, New Secretariat,
Bihar, Patna.
3. The Assistant Drug Controller, Drug Control Administration Patna 4th Floor,
N.M.C.H., Campus, Kankarbagh, Patna
4. The Drug Inspector Patna-6.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ram Shankar Das,Advocate
For the Respondent/s : Mr.Ramadhar Singh -GP25

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 17-09-2019 In view of the statement made in paragraph ‘6’ of the
supplementary counter affidavit that a complaint case bearing
no. 72(0) of 2019 has been filed before the learned Chief
Judicial Magistrate, Patna under various provisions of the Drugs
& Cosmetics (Amendment) Act, 2008, this Court being a
constitutional Court finds no reason to entertain the present writ
application. The petitioner has his remedy available under the
Code of Criminal Procedure by filing an appropriate application
before the regular court i.e. the Court of learned Chief Judicial
Magistrate, Patna where the complaint case is pending.

The contention of learned counsel for the petitioner
that in exercise of his power under Section 22 of the Drugs and



Cosmetic Act, 1940 (hereinafter referred to as the 'Act of 1940'), the Inspector may not seal the premises even though he has found banned drugs manufactured there cannot be accepted by this Court.

Perusal of Section 22 (1) (a), (b) and (d) of the Act of 1940 would show that the Inspectors under Section 22 have got power to inspect any premises wherein any drug or cosmetic is being manufactured. Further the Inspectors have got power to get sample of any drug or cosmetic and can exercise such other powers as may be necessary for carrying out the purposes of this Chapter i.e. Chapter IV of the Act of 1940.

What appears from the counter affidavit and supplementary counter affidavit filed on behalf of respondents no. 1 to 3 is that in course of inspection of the premises of the petitioner when it was found that the petitioner was involved in manufacturing of banned drugs, the samples thereof were taken and the same were sent to the Bihar Drugs Control Laboratory for obtaining report of test or analysis by the Government Analyst. The report dated 14.09.2018 as contained in Annexure 'C' to the counter affidavit has been received. With regard to the third sample of SECON drops 15 ml, the testing could not be done as the Director, Central Drugs Laboratory, Kolkata has requested for certain information. It is stated that the Drug Inspector has vide



Memo No. 32 dated 09.08.2018 asked the petitioner to make available the required document sought by the Central Drugs Laboratory so that testing and analysis of the sample in question may be done. It has further been informed that the State Drugs Controller has granted sanction for prosecution of the petitioner and a complaint case has been registered.

The reliance placed by learned counsel for the petitioner on the judgment of learned Single Judge in C.W.J.C. No. 3732 of 2013 (Rabindar Kumar Sahni Vs. The State of Bihar & Ors.) as well as on the Hon'ble Division Bench of this Court in the case of **U.S.V. Ltd. and Anr. Vs. State of Bihar & Ors.** reported in **2006 (2) PLJR 496** would not be helpful to the petitioner, inasmuch as, it appears that in the case before the learned Single Judge, the facts were totally different and there was no pleading that a complaint case is pending before the learned Chief Judicial Magistrate. Similarly, before the Hon'ble Division Bench interlocutory order was challenged. The said case was with respect to ban imposed by the Drugs Controller on certain products which had not been extended after the prescribed period of 21 days. The present case would not be covered by the ratio of the two judgments.

At this stage, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case



of **Medicamen Biotech Limited and another vs. Rubina Bose, Drug Inspector** reported in **(2008) 7 SCC 196**.

A bare perusal of the judgment of the Hon'ble Supreme Court would show that in the said case the judgment of the Hon'ble Calcutta High Court refusing to exercise its power under Section 482 of the Code of Criminal Procedure to quash the order issuing summon against the petitioner of the said case came to be challenged before the Hon'ble Supreme Court.

In the given facts and circumstance of the said case, the Hon'ble Supreme Court considered the case of the petitioner and held that there was no explanation as to why the complaint itself has been filed about a month before the expiry of the shelf life of the drug. Having found that the appellants before the Hon'ble Supreme Court have been deprived of their valuable rights under Section 25(3) and 25 (4) of the Act proceedings against the appellants were quashed. By no stretch of imagination, the judgment of the Hon'ble Supreme Court would help the petitioner in the present case where the petitioner is seeking unsealing of the premises during pendency of the complaint case before the regular court.

This Court being a constitutional court exercises its discretionary power under Article 226 of the Constitution of India where there is any infringement of the fundamental right of the



petitioner or in the case where the petitioner demonstrates that his statutory right has been infringed without following the established procedure of law and the principles of natural justice. This case does not come within the parameters on the availability of which the Court can exercise its discretion. The reason is that the petitioner has a remedy available before the regular court, this Court declines to entertain the writ application. It is dismissed accordingly but with liberty to the petitioner to seek his remedy before the appropriate court in accordance with law.

(Rajeev Ranjan Prasad, J)

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