

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 310 of 2019

Dr. Jagbir Singh, S/o Shri S.K. Singh, Aged About 44 Years, Proprietor- A.R.C. and P.A.R.C. Clinic, Rahul Plaza, Magarpara, Road, Bilaspur, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh, Through Sonam Jain, Drug Inspector, Office Of Deputy Director, Food And Drugs Administration, District : Bilaspur, Chhattisgarh

---- Respondent

For Applicant	:	Shri T.K. Jha, Advocate
For Respondent/State	:	Shri Anurag Verma, Panel Lawyer

Hon'ble Smt. Justice Rajani Dubey

Order on board

20.09.2019

The applicant has preferred this revision against order dated 22.01.2019, passed by learned Special Judge of Special Court constituted under Drugs and Cosmetics Act, in Special Case [Drugs & Cosmetics]/01/2017, whereby the learned Special Judge has rejected the application of the applicant with regard to the cancellation of the complaint.

2. Facts of the case, in brief, are that on 26.10.2015, a team of Drug Inspector along with the police force inspected the clinic of the applicant where they found that some medicines were unauthorizedly kept in the clinic. When they were inspecting the same, the applicant obstructed them. The applicant did not produce the relevant register/prescription on demand of inspection team. After completion of investigation, the Drug Inspector Sonam Jain filed the complaint against the applicant punishable under Section 22(3), 27(b)(ii), 27(d) of Drugs and Cosmetics Act, 1940

before the (Special Court) Session Court, Bilaspur, C.G.

3. The applicant/accused had filed application before the trial Court in which it is mentioned that the case is triable by Judicial Magistrate and not by Sessions Court. The Drug Inspector who is authorized by the government can only file complaint, but, in this case the complainant who filed complaint has not been authorized by the government, therefore, the applicant prayed that the said complaint may be dismissed. The learned Special Court held that the Drug Inspector is authorized by the government vide notification dated 23.02.2016 and the Court below further held that the Session Court is being designated as Special Court for the purpose of trial in this Act and the Special Court has rejected the application vide order dated 21.02.2019, hence this revision.

4. Learned counsel for the applicant submits that the notification dated 12.01.2016, designated all the Courts of Sessions Judge of the State and the Special Court for trial of offence relating to adulterated drugs and spurious drugs and other offences are not empowered to take cognizance of offence. He further submits that the Court of Sessions Judge designated as Special Courts under the Drug Act, 1940, have not been given specific power to take cognizance of the offence, therefore, directly taking cognizance of the complaint is without authority of law. The learned Special Court has committed illegality in not considering the fact that the Special Court has been established for trial of offence only relating to adulterated drugs and spurious drugs of other offences arising within their jurisdiction under the said Act, so, the order passed by the Special Court is liable to be set aside. In support of his argument, he has also placed reliance in the matter of **Gangula Ashok Vs. State of Andhara Pradesh**¹.

5. Learned counsel for the State submitted that the learned Special

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Judge has been designated as Special Court and he has also placed reliance in the matter of Gangula Ashok (Supra).

6. Heard both the counsel for the parties and perused the material available on record.

7. It is clear from the documents that the complaint has been filed before Special Court by the Drug Inspector. The accused/applicant filed application on 01.12.2018, for cancellation of complaint inter alia stating that the complaint is not at all maintainable, which was rejected by the impugned order. Under Section 32 of the Drugs and Cosmetics Act of 1940 provides as under :-

“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 authorised 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 person aggrieved; or

(d) a recognised 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 Session 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.”

- Section 33M of the Drugs and Cosmetics Act, 1940 provides as under:-

“33M. Cognizance of offences. - (1) No prosecution under this Chapter shall be instituted except by an Inspector²[with the previous sanction of the authority specified under sub-section (4) of section 33G].

(2) No Court inferior to that³[of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter.

- Section 36(a)(b) of the Drugs and Cosmetics Act, 1940, provided as under:-

“[36AB. Special Courts. - (1) The Central Government, or the State Government, in consultation with the Chief Justice of the

High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation. - In this sub-section, "High Court" means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section(1), with which the accused may, under the Code of Criminal Procedure, 1973(2 of 1974), be charged at the same trial.]"

8. The Hon'ble Apex Court in the matter of Gangula Ashok Vs. State of Andhra Pradesh in Para 9, 10 and 11 held as under :-

"9. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "Trial before a Court of Session".

10. [Section 193](#) of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a magistrate", as provided in [the Code](#). Two segments have been indicated in [Section 193](#) as exceptions to the aforesaid interdict. One is, when [the Code](#) itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in [Section 193](#) denoting to those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a magistrate.

11. Neither in [the Code](#) nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a magistrate. If that be so, there is no reason to

think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which magistrates have to do until the case is committed to the Court of session.”

9. In this Act also, there is no specific provision which can specify that the Court of Sessions (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. Thus, the learned Special Court has failed to appreciate this legal position of the matter and passed the impugned order, which is liable to be set aside.

10. The Special Court, under this Act, is essentially a Court of Sessions and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provision of the code, in other words, a complaint or a charge-sheet cannot straightway be made before the Special Court under the Act. Therefore, the learned Special Court is directed to discharged the applicant and return the complaint of the complainant to file it before the competent Court who take cognizance under this Act.

11. Accordingly, the revision is allowed with the aforesaid direction.

Sd/-
(Rajani Dubey)
Judge