

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-33225-2016

Date of decision: 06.02.2019

Dr. Surender Kumar

..... Petitioner

Versus

State of Haryana and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. TC Dhanwal, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing Complaint No. 41 dated 24.01.2012 (Annexure P-4); order dated 30.08.2016 (Annexure P-8) whereby applications dated 12.03.2013 and 11.06.2013 (Annexures P-5 and P-7, respectively) filed by petitioner under Sections 300 and 468 Cr.P.C., were dismissed and all subsequent proceedings arising therefrom qua the petitioner.

Briefly, on 05.06.2009, Manmohan Singh, Drug Controller Officer (notified Inspector) inspected the premises of the petitioner and found that he, by posing himself to be a MBBS Doctor having a qualified degree though could not produce the same, was selling 7 types of allopathic drugs, which were seized. Consequently, aforesaid Drug Controller Officer, lodged FIR No. 434 dated 05.06.2009 (Annexure P-1). After completion of investigation, the police filed final

report under Section 173(2) Cr.P.C., under Sections 18 and 27 of the Drugs and Cosmetics Act, 1940 (for short-'the Act') by adding Section 420 IPC against the petitioner. Consequently, after hearing on the point of charge, the learned Magistrate, vide order dated 18.02.2012 (Annexure P-2) discharging the petitioner under Sections 18 and 27 of the Act, proceeded further against him under Section 419 IPC instead of Section 420 IPC.

Learned counsel *inter alia* contends that after holding trial, the petitioner was acquitted by the trial Court under Section 419 IPC vide judgment dated 28.05.2013 (Annexure P-6) which attained finality on account of not challenging further in appeal or otherwise. Therefore, the impugned complaint (Annexure P-4), subsequently filed by the aforesaid Drugs Controller Officer, under Section 18 and 27 of the Act on the same allegations is liable to be dismissed, on the doctrine of "double jeopardy", inasmuch as, the petitioner cannot be tried for the same offence twice. In support of his contentions, learned counsel has relied upon **(i) Criminal Appeal No. 1160 of 2006, 'Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao and another, decided on 01.02.2011; (ii) Mukhtiar Ahmed Ansari Vs. State (N.C.T. Of Delhi), 2005 CRI.L.J. 2569; (iii) Gian Singh and another Vs. State of Punjab and another, 2012(2) LRC 393 (P&H) and (iv) Bant Singh Vs. The State of Punjab, 2003(1) RCR (Criminal) 235.**

On the other hand, learned State counsel vehemently refuting the submissions of learned counsel for the petitioner contends that the trial Court instead of proceeding independently in FIR (Annexure P-1)

and complaint (Annexure P-4), ought to have clubbed the same together, in view of provisions of Section 210 Cr.P.C., which was filed before discharge of petitioner in FIR case. For any irregularity committed by the learned Magistrate, the petitioner cannot be given any benefit, because under the Act, only complaint could have been filed instead of lodging the FIR. Therefore, the same still remains in force.

Having given thoughtful consideration to the rival submissions, this Court finds merit acceptance this petition for the reasons to follow:

Trial of the petitioner in complaint case is barred by the doctrine of “double jeopardy”, inasmuch as, for the same offence in FIR (Annexure P-1) he was discharged under Sections 18 and 27 of the Act, vide order dated 18.02.2012 (Annexure P-2), to which the State never laid challenge anywhere, rather remained silent till date. Further, the petitioner was also acquitted under Section 419 IPC vide judgment dated 28.05.2013 (Annexure P-6).

For the mistake committed by learned Magistrate, of not clubbing the FIR case and complaint against the petitioner, in view of provisions of Section 210 Cr.P.C., the petitioner cannot be made liable to face trial in complaint case twice, inasmuch as, this point was never raised or brought to the notice of learned Magistrate by the State, while it was dealing with the complaint case. I am fortified in my views by the ratio of judgment of Hon'ble the Supreme Court in **Kolla Veera Raghav Rao's case (supra)**.

The petitioner has already suffered a protracted trial for

around 5 years. Therefore, he cannot be made to suffer any more on account of illegality committed by the Drug Controller Officer, in initially lodging FIR (Annexure P-1) which was not permissible under the Act, instead of filing complaint or any irregularity committed by the learned Magistrate, of not clubbing the cases together under Section 210 Cr.P.C. The order of discharge dated 18.02.2012 (Annexure P-2) since had attained finality, therefore, the same being not challenged has come to the rescue of the petitioner to prosecute him in complaint case for the same offence. Therefore, continuation of complaint (Annexure P-4) against the petitioner shall be a futile exercise.

In view of the discussion made above, the instant petition is allowed. Complaint No. 41 dated 24.01.2012 (Annexure P-4); order dated 30.08.2016 (Annexure P-8) and all the subsequent proceedings arising therefrom qua the petitioner are quashed.

February 06, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No