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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-391-2017 (O&M)

Date of Decision : February 13, 2019

M/s Regency Healthcare and others

.... Petitioners

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Amit Singla, Advocate,
for the petitioners.

Mr. Ashish Sanghi, DAG, Haryana,
for respondent-State .

SHEKHER DHAWAN, J.

Present revision petition is directed against the order dated 21.12.2016 passed by learned Additional Sessions Judge, Hisar whereby charge has been framed against the present petitioners for the offences punishable under Sections 18(1)(i) read with Sections 17, 17A and 17B of the Drugs and Cosmetics Act, 1940 (for short, "**the Act**").

2. Facts relevant for the purpose of decision of the present petition; that Drugs Control Officer, Hisar filed a complaint under Sections 16, 17, 18/27 of Act and Rules framed thereunder on the ground that the same drug was found to be of not standard quality being spurious, misbranded and adulterated and not of standard quality.

3. Thereafter, Shri Y.S. Rathore, learned Additional Sessions

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Judge, Hisar passed order dated 2.7.2013 for summoning the accused persons to face trial for commission of offence punishable under Sections 27(c), 27(b)(i) and 27(d) of the Act. Subsequently, the said Court of learned Additional Sessions Judge on 14.10.2013 (since the Court was not designated Court to entertain the complaint) passed the order and sent the case to learned Sessions Judge, Hisar, who in turn sent the case to the Designate Court i.e., learned Additional Sessions Judge vide order dated 15.10.2013 and passed the following order :-

“ State Versus M/s Regency Healthcare and others

Present : Shri Suresh Chaudhary, Drugs Control Officer
for the Complainant.

Order

Reference perused. In view of the circumstances explained, the present case is transferred to the Special Court of Sh. Chandra Shekhar, Additional Sessions Judge-II, Hisar.

Parties shall appear before the transferee Court on 21.10.2013.

Dated : 15.10.2013

Sd/- Sessions Judge, Hisar”

4. Learned counsel for the petitioners mainly contended that the Designated Court of Additional Sessions Judge-II Hisar had received the complaint by transfer without the same being committed from the Chief Judicial Magistrate against the provisions of law and also challenged the order dated 14.10.2013 passed by the Court of Shri Y.S. Rathore, learned Additional Sessions Judge, Hisar whereby the said Court passed orders for summoning of accused persons, through the Court was not a Designated Court.

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5. Learned counsel for the petitioners further contended that on 21.12.2016, plea was taken before the Court that there was no jurisdiction with the said Court to entertain the complaint without commitment proceedings, but learned Additional Sessions Judge, Hisar framed charges vide order dated 4.1.2017 and the same are contrary to the provisions of law and as such, the same be set-aside.

6. While arguing on this point, learned State counsel contended that the complaint was filed before the Court of Additional Sessions Judge as the drugs found to be in possession of the accused persons were spurious, misbranded and adulterated and not of standard quality and the said cases were triable by the Special Court of Additional Sessions Judge-II as per Haryana Government notification dated 9.2.2012 (Annexure R/1). At the time of filing of complaint, the court of Shri Y.S.Rathore, Additional Sessions Judge was the competent Court to try the complaint. More so, as per provisions of Section 36AB as provided under the Act, the State Government has the power to notify and designate one or more Courts of Session as Special Court and while exercising the said powers, Additional Sessions Judge-II was notified as Designated Court on 9.2.2012 (Annexure R/1) and thereafter, learned Additional Sessions Judge passed the order and sent the matter before learned Sessions Judge, Hisar, who in turn transferred the case to the Designated Court i.e. Court of learned Additional Sessions Judge-II and learned trial Judge (Designated Court) framed charge against the accused persons for the relevant offences finding that there was *prima facie* case made out against the accused persons for the said offences and the present revision petition is liable to be dismissed.

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7. Learned counsel for the petitioners placed reliance upon the judgment of Hon`ble Jammu and Kashmir High Court in **Banu Enterprises vs. State of J & K and others, 2017(2) R.C.R. (Criminal) 540**, wherein view was taken by Hon`ble Jammu and Kashmir High Court that Sessions Court (Designated Court) had no authority to take cognizance straightway without committal by Court of Magistrate.

8. On the same point, reliance was placed upon the judgment from Hon`ble Kerala High Court in **Zest Pharma vs. Drug Inspector, 2014(11) R.C.R. (Civil) 176** and Hon`ble Patna High Court in **Sri Rabindra Singh vs. State of Bihar, 2015(2) R.C.R. (Criminal) 93**.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record of this case file, this Court is of the considered view that there is no dispute on the facts that complaint was filed before the Court of Additional Sessions Judge on 17.8.2011 as the petitioners were found to be in possession of the spurious, misbranded and adulterated drugs. Thereafter, the State of Haryana notified Additional Sessions Judges-II to be the Designated Court to try the offences under the Act and Shri Y.S. Rathore, Additional Sessions Judge-II vide order dated 14.10.2013 sent the case file to learned Sessions Judge, who in turn sent the case to learned Additional Sessions Judge-II, Hisar, which was the Designated Court.

10. As regard to the judgments referred to and relied upon by learned counsel for the petitioners of Hon`ble Patna High Court in **Sri Rabindra Singh case (supra)**, the same is not applicable to the facts of the present case because in that case, the offences alleged against the accused persons were under Sections 18(C), 18(B), 19(a)(VI), 27(b)(II) and

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27(d) of the Act , whereas in the present case, the offences alleged against the accused persons are under Sections 18(1)(i) read with Sections 17, 17A and 17B of the Act.

11. As regard to the judgments relied upon by learned counsel for the petitioners in **Banu Enterprises, Zest Pharma cases (supra)**, they are also not applicable to the facts of the present case because in the present case, the offences alleged against the petitioners are under Sections 18(1)(i) read with Sections 17, 17A and 17B of the Act and while exercising powers under Section 36AB of the Act, the State of Haryana issued notification that Additional Sessions Judges-II in every District is to be the Designated Court to try the offences under the Act and there was nothing wrong while learned Additional Sessions Judge-II framed charges having found that sufficient material was available on the file.

12. Similar matter was before Hon`ble Karnataka High Court in **Deepesh Arvindbhai Patel and others Vs. State of Karnataka, 2015 (29) R.C.R. (Criminal) 375** and Hon`ble Karnataka High Court was of the view that there was nothing wrong if the Designated Court exercises the power without there being any committal proceedings.

13. More so, as Additional Sessions Judge-II is the Designated Court duly notified for this purpose by the State of Haryana vide notification Annexure R/1, there was nothing wrong if the Court of Sessions is acting as Court of original jurisdiction and the said Court is empowered to take cognizance and issue summons. Such a view was taken by Hon`ble Apex Court in **Balveer Singh & Anr. Vs. State of Rajasthan and Anr., 2016(5) JT 1.**

14. In view of the above, the present revision petition is without

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any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 13, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes

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