

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38791 of 2022**

Arising Out of PS. Case No.-67 Year-2021 Thana- KHARHAGPUR District- Munger

BINOD KUMAR SAH @ BINOD KUMAR Son of Late Shiv Nath Sah
Resident of village - Tarapur More, P.S.- Kharagpur, District - Munger.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Munish Kumar, Advocate

For the Opposite Party/s : Dr. Ajeet Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

- 2 18-08-2022 **1.** Heard the parties.
- 2.** This application is being filed by this petitioner for quashing of the First Informant Report of Haveli Kharagpur P.S. Case No. 67 of 2021, registered under Sections 420 and 201 of the Indian Penal Code and Sections 23/26/27/28 and 30 of Bihar Clinical Establishment (Registration and Regulation) Rule 2013 and 27(b)(ii), 28, 28(A)/36(A)(C) of the Drugs and Cosmetics Act, 1940.
- 3.** Allegation, as set out against petitioner in short, that Dr. Lal Bahadur Gupta, Incharge Medical Officer of health Centre, Haweli Kharagpur on seeing the published article “MUFT DI JANE WALI DAWA KE WASOOL RAHE PAISE” in Hindustan daily newspaper on



21.02.2021 constitute a raiding team, consisting of Ajay Kumar, Medical Inspector and Harendra Kumar Singh, Circle officer, Kharagpur, S.H.O. Haveli Kharagpur, for raid in the clinic of Binod Kumar Sah. Petitioner was physically present at the time of raid along with working staff, namely, Abhishek Kumar and Arti Kumari. It was stated that medical apparatus and medicine, were found thereof where staffs were working as Compounder and nurse. During search two patients, namely, Karishma Kumari and Bobby Devi were found, who were shifted to Health Care Centre at Kharagpur. It is alleged that stethoscope (Ala), B.P. Machine, Ultra sound Machine, E.C.G. Machine, Saline Stand, Oxygen Cylinder, Medical pad and some registers along with the medicine in huge quantity, etc. found in said clinic, were stored in one room in want of paper. After videography, said room was sealed. It is further alleged thereof, when said room was opened in presence of independent witnesses, namely, Deo Kumar and Ranjeet Kumar Yadav, nothing was found as stored earlier, as, room found open and Government seal was broken.

4. It is submitted by learned counsel for the petitioner



that allegation is not made out under Section 420 and 201 of the IPC and for the offence alleged under Section 27(b) (ii), 28, 28(A)/36(A)(C) of the Drugs and Cosmetics Act, 1940, the official complaint should be lodged and, as such, present prosecution is not in accordance with law. In support of the submission the learned counsel relied upon a judgment of Hon'ble Supreme Court, titled as ***UOI Vs. Ashok Kumar Sharma and Ors.***, reported as ***2020 SCCOnline SC 683***.

Para 4

“It was further held that the lodging of the FIR is absolutely barred and FIR deserved to be quashed. The court also directed the issue of notice to the Inspector who had gone to the lodge the Fir, despite thee being a special provision for launching the prosecution and explanation was sought Still further it was directed as follows:

23. We, accordingly, allow this petition and quash the FIR and simultaneously it is further directed that notice shall be issued to the concerned inspector by the Competent Authority to show cause as to whey lodged an FIR when there is specific provision for prosecuting the accused by lodging a



compliant. Explanation and action taken against him, shall be forwarded to the Court by the Competent within 8 weeks from today through Registrar General of this Court who shall place the same before us for perusal in our chambers as soon as the same is received by Registrar General. We further grant liberty to the respondent no.4 to initiate criminal proceedings in accordance with the procedure laid down under this Act forthwith against the petitioner.

5. It has further been submitted by learned counsel for the petitioner that Section 32 of the Drugs and Cosmetics Act, 1940 permits to lodge prosecution only through official complaint and submitted that no case is made out, as entire prosecution was wrongly set in motion against the petitioner and same is to be quashed.

6. Learned APP appearing on behalf of the State, submitted that documents of **Annexure – 3** series of the present petition is not convincing enough that petitioner is a registered medical practitioner. It is submitted that petitioner is none but a quack of locality, and not an authorized medical practitioner, either by State Medical Council or Indian Medical Council. It is also submitted



that after considering the material available and found the case *prima-facie* true against the petitioner, learned trial court took cognizance. It is further submitted that FIR was lodged for two distinct cognizable and non-bailable offences also i.e. under Section 420 and under Section 201 of IPC; and as such this court restrain to exercise its extra-ordinary power under Section 482 of the Cr.P.C. It is also submitted that petitioner has alternate remedy to raise this issue, at the time of framing of charge.

7. It would be appropriate to reproduce the ratio laid down through paragraph No. 102 of the Hon'ble Supreme Court, reported in the matter of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined



and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the



concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. From perusal of record, it appears that the petitioner is named in FIR and doing practice in the field of allopathic medicine, without obtaining any degree and expertise as prescribed under law. Petitioner is neither registered with Indian Medical Council nor with State Medical Council. At the time of raid, two patients, who were just operated found in the clinic of the petitioner. It further appears that government seal of the room, where all seized equipments were stored by raiding agency, found open.

9. This is not a case, where, FIR was lodged for the exclusive offence of Cosmetic & Drugs Act, 1940, where necessarily a complaint to be lodged, as per Section 32 of the Act. There is sufficient material to constitute an



independent offences as alleged under Section 420 and 201 of the IPC, which are cognizable and non-bailable offences.

10. Hence, there is nothing to gathered from above, that FIR in issue is only for non-cognizable offence, where complaint case under Cosmetic & Drugs Act, 1940 to be lodged. There is sufficient material to constitute independent offences as alleged under Section 420 and 201 of the IPC and as such, it can not be said that allegation in entirety do not constitute, *prima-facie* offence, or same is so absurd and improbable on the basis of, which no prudent persons can ever reach a just conclusion to have sufficient ground for proceeding or same is manifestly attended with malafide, as held in ***Bhajan Lal Case (Supra)***.

11. In view of the above, there is no occasion to exercise the extra-ordinary power under Section 482 of the Cr.P.C. of this Court to interfere with the present proceedings.

12. Accordingly, present quashing petition is devoid of any merit to attract the extra-ordinary power of this Court under Section 482 of the Cr.P.C., to quash the First



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13. Accordingly, the present quashing petition, is being dismissed.

(Chandra Shekhar Jha, J)

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