

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6430 of 2016

Arising Out of PS. Case No.-130 Year-2015 Thana- BARHIYA District- Lakhisarai

Sitaram Chourasia son of Chandradeep Chourasia, resident of Village Khuthadih, P.S. Barahiya, District Lakhisarai.

... .. Petitioner/s

Versus

1. State of Bihar
2. The Drug Inspector, Lakhisarai, Bihar.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 21930 of 2013

Arising Out of PS. Case No.-197 Year-2007 Thana- PIRBAHOR District- Patna

Kamlesh Kumar Son of Bhola Prasad Resident of S.P. Ghosh Lane, Govind Mitra Road, P.S. Pirbahore, District Patna

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shambhu Nath Thakur S/o Late Mahendra Thakur Drug Inspector, Resident Of Manikpur Musaharniya, P.S. Parihar, District Sitamarhi

... .. Opposite Party/s

with

Criminal Writ Jurisdiction Case No. 1220 of 2014

Arising Out of PS. Case No.-435 Year-2014 Thana- GAYA KOTWALI District- Gaya

Ashwani Kumar Son of Sri Shiv Shankar Prasad Resident of Murali Hill - Purani Godown, Station Road, P.S. Kotwali (town), District Gaya

... .. Petitioner/s

Versus

1. The State of Bihar Through District Magistrate, Gaya
2. Rajeeb Ranjan S/o not mentioned in F.I.R, Drug Inspector, Gaya Nagar Nigam, Gaya

... .. Respondent/s



with
Criminal Writ Jurisdiction Case No. 222 of 2015

Arising Out of PS. Case No.-348 Year-2013 Thana- RAXAUL District- East Champaran

1. Rita Devi @ Rita Kumari W/o Rakesh Prasad.
2. Rakesh Prasad @ Rakesh Kumar S/o Dwarika Prasad Both resident of Main road raxaul, P.S. - Raxaul, District - East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Health Department, Govt. Of Bihar, Patna
2. The Drugs Controller Bihar, 4th Floor, Vikas Bhawan, New Secretariat, Patna.
3. The Collector, East Champaran, Motihari.
4. The Superintendent of Police, East Champaran, Motihari.
5. The Drugs Controller, East Champaran, Motihari.
6. The Drugs Inspector, Raxaul, East Champaran.
7. The Dy. S.P. Raxaul, East Champaran.
8. The O/C Raxaul, P.S. East Champaran.

... .. Respondent/s

with
Criminal Writ Jurisdiction Case No. 500 of 2015

Arising Out of PS. Case No.-61 Year-2014 Thana- RUPASPUR District- Patna

1. M/s Nexus Life Sciences (India) Pvt. Ltd. Manufacturer registered office at A-4/47 Paschim Vihar, New Delhi-63
2. Nisant Jain Son of Shree Satendra Kumar Jain Managing Director, M/s Nexus Life Sciences India Pvt. Ltd., A-4/47, Paschim Vihar, New Delhi - 63.
3. Smt. Shweta Jain wife of Shree Nisant Jain other Director in the Board of Directors, M/s Nuxus Life Sciences India Pvt. Ltd., A-4/47, Paschim Vihar, New Delhi - 63.
4. Awdhesh Kumar son of Shree Navratan Singh resident of Yadav Nagar Kushumra, Police Station - Kushumra, District - Mainpuri, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Health Department, Government of Bihar, Patna.



3. The Executive Director-cum-Secretary, Health, State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura Patna.
4. Drug Inspector, Health Department, Patna - 19 Bihar.

... .. Respondent/s

=====

with

Criminal Writ Jurisdiction Case No. 991 of 2015

Arising Out of PS. Case No.-480 Year-2015 Thana- MUZAFFARPUR TOWN District- Muzaffarpur

=====

1. M/s Aman Drugs, Gajadhar Choudhary Lane, Agrwal Market, Saryaganj, Muzaffarpur through Its Proprietor S/o Sri Shiv Shankar Prasad Agrawal, R/o Mohalla- Nava- Nagar- Nijamat, P.S.- Sahebganj, District- Muzaffarpur.
2. Manoj Kumar S/o Sri Shiv Shankar Prasad Agrawal, R/o Mohalla- Nava- Nagar- Nijamat, P.S.- Sahebganj, District- Muzaffarpur, Proprietor, M/s Aman Drugs, Gajadhar Choudhary Lane, Agrwal Market, Sarairajan, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through Superintendent Of Police, Muzaffarpur
2. Lallan Kumar Sinha, S/o Radhe Shran Sinha, Drugs Inspector, Muzaffarpur.

... .. Respondent/s

=====

with

Criminal Writ Jurisdiction Case No. 443 of 2016

Arising Out of PS. Case No.-98 Year-2015 Thana- CHANDRADIP District- Jamui

=====

Nageshwar Prasad son of Late Moti Sao, resident of Village- Aliganj, Post Office- Aliganj, Police Station- Chandradip, District- Jamui.

... .. Petitioner/s

Versus

1. The State Of Bihar, through Health Department, The Government Of Bihar, Patna
2. Licensing Authority, Jamui, District- Jamui.
3. Mr. Dhananjay Kumar Drug Inspector, Jamui-1, District- Jamui.
4. The Officer-in-Charge, Chandradeep Police Station, District- Jamui.

... .. Respondent/s

=====

with

Criminal Writ Jurisdiction Case No. 306 of 2017



Arising Out of PS. Case No.-829 Year-2015 Thana- BETTIAH CITY District- West Champaran

Uzair Alam @ Md. Ozair @ Md. Ozair Alam son of Md. Samsul Quraishi, resident of Mohalla- Behind Saint Teresa School, Barhai Tola, Bettiah, P.S.- Bettiah Town, District- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar through Principal Secretary, Health Department, Patna.
2. The Drugs Inspector, Sadar Sub-Division, Urban Area, West Champaran at Bettiah.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1796 of 2017

Arising Out of PS. Case No.-264 Year-2017 Thana- PIRBAHOR District- Patna

Neeraj Kumar, S/o Sri Naresh Prasad, R/o Mohalla Naya Tola Triloki Market, P.S. Kadamkuan, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Health Department New Secretariat, Patna.
2. Dr. Sachidanand Prasad, S/o Sri Lal Prasad, R/o Village-Bind, P.S. Bind, District-Nalanda, presently posted as Drug Inspector, Patna-09
3. The Officer-in-Charge, Pirbahore, Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 2615 of 2017

Arising Out of PS. Case No.-527 Year-2015 Thana- GAYA KOTWALI District- Gaya

Manish Kumar proprietor of Tirupati Medical Agency, Laxmi Place F.B.S. Road Gaya, S/o Sri Uma Shankar Barnwal, R/o Mohalla- Swarajpuri, P.S.- Kotwali, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Health Department, New Secretariat, Patna
2. Rajiv Nandan Presently posted as Drug Inspector, Municipal Corporation Area, Gaya, R/o Village-.. P.S. Bind, District-Nalanda



3. The Officer-In-Charge Kotwali Police Station, Gaya.

... .. Respondent/s

with

CRIMINAL MISCELLANEOUS No. 5202 of 2017

Arising Out of PS. Case No.-115 Year-2016 Thana- TATARPUR District- Bhagalpur

Dr. Binay Kumar Gupta @ Binay Kumar Gupta S/o Dr. Mahesh Prasad Gupta, Proprietor of M/s Vinay Homeo Pharmacy, Ram Das Gupta Path, Laheri Tola, P.S.- Tatarpur, District- Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through The State Drug Controller, Directorate Of Health Services, Government Of Bihar, Patna
2. The Assistant Drug Controller, Drug Control Administration, Bhagalpur.
3. The Drug Inspector, Bhagalpur-2, Bhagalpur.

... .. Opposite Party/s

with

Criminal Writ Jurisdiction Case No. 1317 of 2018

Arising Out of PS. Case No.-61 Year-2014 Thana- RUPASPUR District- Patna

Kaushal Kishore Jha @ Kaushal Kumar Jha son of Shree Vidyanand Jha, Resident of 2-D Vaidahi Apartment, Lohiya Path, Jagdeo Path, Police Station- Shashtri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary Health Deptt.
2. The Director, Health Department, Government of Bihar, Patna.
3. The Executive Director-cum- Secretary, Health, State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna.
4. The Drug Inspector, Health Department, Patna- 19 Bihar.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1460 of 2018

Arising Out of PS. Case No.-275 Year-2018 Thana- PIRBAHOR District- Patna

Rakesh Mishra S/o R.P. Mishra 202, Rajendra Ram Plaza, Exhibition Road, P.S. - Gandhi Maidan, Patna - 800001.



... .. Petitioner/s

Versus

1. The State Of Bihar, through Director General Of Police, Old Secretariat, Patna.
2. Senior Superintendent of Police, Gandhi Maidan Road, Patna, Bihar - 800001.
3. City SP Central Patna, Gandhi Maidan Road, Patna, Bihar - 800001.
4. Investigating Officer, Pirbahore P.S. Case No. 275/2018.
5. Dr. Sachchidanand Prasad, Drug Inspector/Informant, Pirbahore P.S. Case No. 275/2018, Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1462 of 2018

Arising Out of PS. Case No.-275 Year-2018 Thana- PIRBAHOR District- Patna

1. Sushil Kumar S/o Late Mahtura Prasad Singh Sri Ram Tower, Main Road, Kankarbagh, P.S. - Kankarbagh, Dist Patna - 800020.
2. Ram Prabodh Kumar S/o Late Ambika Dutt Sharma Sri Ram Tower, Main Road, Kankarbagh, P.S. - Kankarbagh, Dist Patna - 800020.

... .. Petitioner/s

Versus

1. The State of Bihar, through Director General Of Police, Old Secretariat, Patna
2. Senior Superintendent of Police, Gandhi Maidan Road, Patna, Bihar - 800001.
3. City SP Central Patna, Gandhi Maidan Road, Patna, Bihar - 800001.
4. Investigating Officer, Pirbahore P.S. Case No. 275/2018.
5. Dr. Sachchidanand Prasad, Drug Inspector/Informant, Pirbahore P.S. Case No. 275/2018, Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 3114 of 2018

Arising Out of PS. Case No.-282 Year-2017 Thana- PIRBAHOR District- Patna

Achewtanand Singh Son of Late Shyam Sunder Singh, Proprietor of M/S Kiran Pharma, Babutola Lane, Behind Janta Hotel, Govind Mitra Road, Patna, Resident of Mohalla- Kankarbagh Ashok Nagar, Near Shivam Convent, P.S.- Kankarbagh, District- Patna.



... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Home Department, Government Of Bihar, Patna
2. The Principal Secretary, Health Department, Government of Bihar Patna.
3. The Director General Police, Bihar, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Station House Officer, Pirbahore Police Station, District- Patna.
6. Shri Rahul Deo Berman, Sub- Inspector, Pirbahore Police Station being Investigating Officer of Pirbahore, P.S. Case No. 282/2017
7. Dr. Sachidanand Prasad, Drug Inspector, Patna being the informant of Pirbahore, P.S. Case No. 282/2017

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 186 of 2019

Arising Out of PS. Case No.-628 Year-2018 Thana- AGAMKUAN District- Patna

Debjit Basu late Amal Chandra Basu R/o Flat No. 401, R.K. Avenu Vishal Villa, Rajendra Nagar, P.S. Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar, through The Director General Of Police, Patna. Bihar,
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Patna.
4. The Officer-In-Charge., Agamkuan, P.S. District- Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 533 of 2019

Arising Out of PS. Case No.-352 Year-2018 Thana- RUPASPUR District- Patna

Pankaj Kumar Son of Sachindra Kumar Verma, Authorised Representative of M/S Colisc Biotech Private Limited. Situated at Flat No. 301, Suksha Presidency, Ramjaipal Road, Kalakriti Dance Class, Bailey Road, P.S- Danapur, District- Patna. At present Resident of Mohalla- Bibiganj, Bhatta Road, Danapur, P.S. Danapur, District - Patna.

... .. Petitioner/s

Versus



1. The State Of Bihar, through Principal Secretary, Department Of Health, Government Of Bihar, Patna.
2. Ranjan Kumar Son of Ramprit Paswan, Drug Inspector, Patna Resident of Trilok Bigaha, P.S.- Hilsa, District - Nalanda.
3. The Officer-in-Charge, Rupaspur Police Station, Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 872 of 2019

Arising Out of PS. Case No.-200 Year-2019 Thana- KOTWALI District- Patna

Rajendra Prasad @ Rajendra Prasad Agarwal Son of Late Ram Prasad Lall At present resident of Mohalla- Goriyatoli, P.S.- Kotwali, District- Patna, Permanent Resident of Village - War, P.S.- Madanpur, District- Aurangabad, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Health Deptt., Bihar Patna
2. Principal Secretary, Health Department, Government of Bihar, Patna
3. The Principal Secretary Home (Police) Department Government of Bihar, Patna
4. Director General of Police Bihar, Patna
5. The Sr. Superintendent of Police, Patna
6. The S.H.O. Police Station - Kotwali, Patna
7. The State Drugs Controller, Bihar, Patna
8. The Inspector of Drugs, Patna

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1779 of 2019

Arising Out of PS. Case No.-410 Year-2019 Thana- RAJIVNAGAR District- Patna

Rajesh Kumar Son of Pulis Ray Resident of Village - South Shivpuri Ojha Lauj Nala Par, P.O. and P.S.- Shashtri Nagar, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home (Spl), Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Patna



5. The Senior Superintendent of Police, Patna.
6. The Superintendent of Police, Patna.
7. The Deputy Superintendent of Police, Patna.
8. The Station House Officer, Rajiv Nagar, P.S., Patna
9. The Investigation Officer, Rajiv Nagar P.S., Patna.
10. Ranjan Kumar, Drugs Inspector, Patna-11.

... .. Respondent/s

with
Criminal Writ Jurisdiction Case No. 1780 of 2019

Arising Out of PS. Case No.-476 Year-2019 Thana- DIGHA District- Patna

Rajesh Kumar Son of Pulis Ray resident of South Shivpuri Ojha Lauj Nala Par, P.O. and P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home (Spl.), Bihar, Patna.
3. The Director General of Police, Bihar, Patna
4. The Deputy Inspector General of Police, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Superintendent of Police, Patna.
7. The Deputy Superintendent of Police, Patna.
8. The Station House Officer, Digha, Police Station, Patna.
9. The Investigation Officer, Digha, P.S., Patna.
10. Ranjan Kumar, Drugs Inspector, Patna-11.

... .. Respondent/s

with
CRIMINAL MISCELLANEOUS No. 14542 of 2019

Arising Out of PS. Case No.-116 Year-2015 Thana- PIYAR District- Muzaffarpur

Dr. Shyam Kumar Son of Harikishor Prasad @ Hari Kishore Prasad Singh Resident of Village - Lautan , P.O.- Harsinghpur Lautan, PS. Sakra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shashi Bhushn Kumar Son of Ramavtar Paswan then posted as Drug



Inspector, Muzaffarpur-4, Resident of Village-Chhaperatar, PO and PS-
Pandarak, District-Patna.

... .. Opposite Party/s

with
Criminal Writ Jurisdiction Case No. 821 of 2021

Arising Out of PS. Case No.-8 Year-2021 Thana- DHOLBAJJA District- Bhagalpur

1. Shabana Perween Wife of Imtiyaz Alam Resident of Village- Ujani, Police Station- Naugachia, District- Bhagalpur.
2. Md. Imtiyaz Alam @ Imteyaz Alam Son of Md. Jabbar Hussain Resident of Village- Ujani, Police Station- Naugachia, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police Bihar, Patna.
2. The Director General of Police, Bihar, Patna
3. The Civil Suregeon Cum Chief Medical Officer, Bhagalpur
4. The Superintendent of Police, Naugachia Bhagalpur.
5. The Drug Controller, Bihar, Patna
6. The Assistant Drug Controller, Directorate of Drugs Control, Bhagalpur (R)
7. Mr. Jitendra Kuma Sinha, The Drug Inspector Bhagalpur-2
8. The S.H.O. Sahayak Police Station, Kadwa Naugachia, District-Bhagalpur. Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 6430 of 2016)

For the Petitioner/s : Mr. Alok Kumar @ Alok Kr. Shahi, Adv.
Mrs. Archana Sinha, Adv.

For the Opposite Party/s : Mr. Indra Kr. Singh, APP

(In CRIMINAL MISCELLANEOUS No. 21930 of 2013)

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv.

For the Opposite Party/s : Mr. A.L.Pandit, APP

(In Criminal Writ Jurisdiction Case No. 1220 of 2014)

For the Petitioner/s : Mr. Kalyan Kumar Ghose, Adv.

For the Respondent/s : Mr. Ashok Kumar, APP

(In Criminal Writ Jurisdiction Case No. 222 of 2015)

For the Petitioner/s : Mr. Sangeet Deokuliari, Adv.

For the Respondent/s : Mr. Gayan Prakash Ojha, GA-7

(In Criminal Writ Jurisdiction Case No. 500 of 2015)

For the Petitioner/s : Mr. Madan Jeet Kumar, Adv.

For the Respondent/s : Mr. K. B. Singh SC- 22

(In Criminal Writ Jurisdiction Case No. 991 of 2015)

For the Petitioner/s : Mr. Rajeev Kumar Singh, Adv.
Mr. Pranab Jha, Adv.

For the Respondent/s : Mr. Raghwanand, GA-11



(In Criminal Writ Jurisdiction Case No. 443 of 2016)

For the Petitioner/s : Mr. Upendra Kumar Singh
For the Respondent/s : Mr. Manish Kumar, GP-4
Mr. Deepak Kumar, AC to GP-4

(In Criminal Writ Jurisdiction Case No. 306 of 2017)

For the Petitioner/s : Mr. Umesh Chandra Verma, Adv.
For the Respondent/s : Mr. Binod Kumar Yadav SC -18

(In Criminal Writ Jurisdiction Case No. 1796 of 2017)

For the Petitioner/s : Mr. Ram Shankar Das, Adv.
For the Respondent/s : Mr. Lalit Kishore, AG

(In Criminal Writ Jurisdiction Case No. 2615 of 2017)

For the Petitioner/s : Mr. Ram Shankar Das, Adv.
For the Respondent/s : Mr. Mujtabaul Haque GP-12
Mr. Vasant Vikas, AC to GP-12

(In CRIMINAL MISCELLANEOUS No. 5202 of 2017)

For the Petitioner/s : Mr. Krishna Chandra, Adv.
For the Opposite Party/s : Mr. Amit Kumar Rakesh, Adv.

(In Criminal Writ Jurisdiction Case No. 1317 of 2018)

For the Petitioner/s : Mr. Anil Kumar, Adv.
For the Respondent/s : Mr. Binod Kumar Yadav SC-18

(In Criminal Writ Jurisdiction Case No. 1460 of 2018)

For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.
Mr. Daya Nand Singh, Adv.
Mr. Nagadeo Choubey, Adv.
For the Respondent/s : Mr. Md. N. H. Khan, SC-I
Ms. Babita Kumari, AC to SC-1

(In Criminal Writ Jurisdiction Case No. 1462 of 2018)

For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.
Mr. Daya Nand Singh, Adv.
Mr. Nagadeo Choubey, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3

(In Criminal Writ Jurisdiction Case No. 3114 of 2018)

For the Petitioner/s : Mr. Jitendra Kumar, Adv.
For the Respondent/s : Mr.

(In Criminal Writ Jurisdiction Case No. 186 of 2019)

For the Petitioner/s : Mr. Awadhesh Kumar, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5
Ms. Shalini, AC to GP-5

(In Criminal Writ Jurisdiction Case No. 533 of 2019)

For the Petitioner/s : Mr. Prashant Kumar, Adv.
For the Respondent/s : Mr. Rajeshwar Singh, GA-10

(In Criminal Writ Jurisdiction Case No. 872 of 2019)

For the Petitioner/s : Mr. Prashant Kashyap, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-4
Mr. Deepak Kumar, AC to GP-4

(In Criminal Writ Jurisdiction Case No. 1779 of 2019)

For the Petitioner/s : Mr. Viveka Nand Singh, Adv.
For the Respondent/s : Mr. Mankeshwar Tiwari

(In Criminal Writ Jurisdiction Case No. 1780 of 2019)

For the Petitioner/s : Mr. Viveka Nand Singh
For the Respondent/s : Mr. Prabhat Kumar Verma

(In CRIMINAL MISCELLANEOUS No. 14542 of 2019)

For the Petitioner/s : Mr. Ganesh Prasad Singh, Adv.
For the Opposite Party/s : Mr. Sanjay Kumar Sharma, Adv.

(In Criminal Writ Jurisdiction Case No. 821 of 2021)

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3



=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 10-08-2022

These applications have been heard together since they involve a common question of law.

Mr. P.N. Shahi, learned Senior Counsel has led the submissions.

The parties are in agreement that all these applications are squarely covered by a Special Bench Judgment of this Court in **Bablu @ Rajesh Kumar and Others v. The State of Bihar and Others** since reported in **(2021) 3 PLJR 220**.

The operative part of the aforesaid judgment in paragraphs-89 and 90 reads as under:-

“89. In conclusion, the reference is being answered thus:-

(i) Issue No. II :

(a) The police has no power to institute and investigate the offences under Chapter III, Chapter IV and Chapter IV-A of the Drugs and Cosmetics Act, 1940.

(b) The offences under Chapter IV-A are not to be tried by the court of Sessions and except the offences under Clauses (a) and (b) of Section 13 of the Drugs and Cosmetics Act, 1940, all other



offences under Chapter III would be triable by a court of Judicial Magistrate.

(c) When imported drugs and cosmetics are distributed, or sold, or stocked, or exhibited, or offered for sale, they would be covered by Chapter IV of the Drugs and Cosmetics Act, 1940.

(ii) Issue No. III :

The judgments of this Court in Cr.W.J.C. No. 719 of 1998, Cr.Misc. No. 808 of 1998 and Cr.Misc. No. 50246 of 2006 are affirmed as good law.

(iii) Issue No. IV :

The said issue is now exhaustively covered by the judgment of the Hon'ble Supreme Court in the case of *Ashok Kumar Sharma* (Supra), which lays down that the prosecution under Section 32 of the Drugs and Cosmetics Act, 1940 shall be instituted only by way of filing of complaint and that police cannot register and investigate offences under Chapter IV of the Drugs and Cosmetics Act, 1940.

90. After answering the reference, I deem it proper to issue following directions keeping in view the ramification of the matter :-

(i) In the FIRs instituted in respect of the offences under Chapter III and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of *Ashok Kumar Sharma* (Supra) and where investigation has been completed and cognizance has been taken



by the court and the cases have travelled beyond the stage of cognizance shall be saved and the prosecution shall continue as per the provisions prescribed under the Cr.P.C.

(ii) The cases in which the FIRs were instituted in respect of the offences under Chapter III and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Sharma** (Supra) and where investigations have not been completed, all previous acts of the police officer including the investigation and the material collected in course of investigation and the pending proceedings shall be saved on account of de facto doctrine and only the prosecution of the cases shall be handed over to the concerned Drug Inspector, who shall prosecute through Public Prosecutor or the Special Public Prosecutor, as the case may be.

(iii) In such cases any action taken by the police, except handing over the case to Drug Inspector, after the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Sharma** (Supra) shall be a nullity in the eye of law.

(iv) During argument, we have been told that there are many cases where FIRs have been registered in regard to cognizable offences falling under the Drugs and Cosmetics Act, 1940 and the pending investigations prior to the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar Sharma** (Supra) have not been handed over



to Drug Inspector till date. In all such cases, it would be the responsibility of the Director General of Police of the State of Bihar to ensure that pursuant to the directions of the Hon'ble Supreme Court in the case of *Ashok Kumar Sharma* (Supra), those cases should be handed over by the police to the concerned Drug Inspectors as early as possible, but no later than one month from the date of receipt of a copy of this order.

(v) In all such FIRs registered for the offences punishable under the Drugs and Cosmetics Act, 1940 in which the samples of drugs and cosmetics had been sent for test or analysis and the samples were analyzed or tested and were found misbranded, spurious or adulterated by the Government Analyst and the report has been received during investigation, the concerned Drug Inspector shall be individually responsible to file prosecution report before the court and to take action on the same in accordance with law as early as possible and preferably within a further period of one month from the date of receipt of the FIR and other materials collected during investigation from the police.

(vi) The Drug Controller, State of Bihar shall also be individually responsible to ensure compliance of the directions made in para (v) by this Court.”

With consent of the parties, these applications are



disposed of in terms of the directions given in paragraphs-89 and 90 of the Special Bench Judgment of this Court in **Bablu @ Rajesh Kumar and Others** (supra).

Interim order, if any, in these applications, stands vacated.

(Ashwani Kumar Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12-08-2022
Transmission Date	NA

