

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-11532-2022(O&M)

Rajesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CRM-M-12335-2022(O&M)

Rajesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

Date of Decision: July 04, 2022

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Brijeshwar Singh Bhalla, Advocate for the petitioner.

Mr.B.S.Sewak, Addl.AG, Punjab.

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HARINDER SINGH SIDHU, J.

This order shall dispose of the above two petitions.

In CRM-M-11532-2022 , the petitioner has prayed for setting aside the order dated 21.02.2022 of learned Chief Judicial Magistrate, Moga, whereby his application under Section 319 Cr.P.C. for summoning Dr. Satinder Bhushan Gupta as additional accused has been dismissed.

In CRM-M-12335-20222 the petitioner has prayed for setting aside of the order dated 27.01.2022, whereby the application under Section 311 of Cr.P.C. filed by the prosecution for summoning Dr. Satinder Bhushan

Gupta as a prosecution witness has been allowed.

A criminal complaint No.COMA-04-2019 dated 19.01.2019 titled as 'State Vs. Rajesh Kumar' under Section 18(c), 18-A and 18(a)(i) of the Drugs and Cosmetics Act, 1940 has been filed against the petitioner. As per the said complaint on 20.06.2018 on basis of some information received in the office of Drugs Inspector Moga an Inspecting team comprising of Amit Bansal Drugs Inspector Moga-II (complainant), Mrs. Sonia Gupta, Drugs Inspector Moga-I and Sh. Amanjot Officiating SMO Kot-Ise-Khan visited the unlicensed premises of Public Hospital, Moga Road, Dharamkot District Moga. The petitioner was present there as in-charge of the unlicensed premises. Before inspection, the Inspecting team tried to join independent persons as public witnesses but none agreed. During inspection of the unlicensed premises, the petitioner was found to have stocked many types of allopathic drugs. The petitioner produced a registration certificate of the Board of Electro-homeopathic System but he was not able to produce any valid license for sale of allopathic drugs or a Registered Medical Practitioner (RMP certificate) which could authorize him to stock allopathic drugs for sale and distribution at his premises. As per the complaint, during inspection, 22 types of allopathic drugs were seized from the premises. Form 16 was signed by all the members of the inspecting team. A copy of the same was handed over to the petitioner. The seized drugs were produced before the Duty Magistrate Moga and custody orders were obtained as required under Section 23(5)(b) of the Drugs and Cosmetics Act, 1940.

A registered letter dated 21.06.2018 was sent to the petitioner.

On 09.07.2018 a reply was received from the petitioner in which he submitted the affidavit, a registration certificate (B.A.M.S) and Aadhar card of Dr. Satinder Bhushan Gupta and some purchase bills of drugs. On 17.07.2018 a registered letter was sent to the petitioner. Another registered letter was sent to Dr. Satinder Bhushan Gupta. On 03.08.2018, a reply was received from Dr. Satinder Bhushan Gupta, in which he stated that the petitioner had submitted his false and fabricated documents related to the inspection.

As per the test report of the Government Analyst Punjab the sample was declared to be 'Not of Standard Quality'.

On 24.08.2018 the complainant alongwith the Drugs Inspector Moga-I conducted inspection of the Firm M/s Shri. Sheetla Distributors Moga. On 24.08.2018, the complainant alongwith Drugs Inspector Moga-I conducted inspection of firm M/s Harsukh Medicos Moga for verification of purchase bills/invoices submitted by the petitioner in his reply.

On 24.08.2018 during inspection of the Firm M/s Shri Sheetla Distributors, Sandeep Sood (Partner Cum C.P. of the Firm) stated that he issued invoice No. W-0001012 dated 17.05.2018 to Rajesh Kumar Prop. of Public Hospital, Dharamkot (the petitioner). On 24.08.2018, complainant along with Sonia Gupta, Durgs Inspector Moga-I visited Firm M/s Harsukh Medicos, Moga for verification of invoice No.HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 submitted by the petitioner in his reply in connection with inspection dated 20.06.2018. During verification it was found that the above said two invoices differed from the invoices issued by

the Firm M/s Harsukh Medicos, Moga. Firm M/s Harsukh Medicos, Moga had issued invoice No.HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 to M/s Public Hospital, Dharamkot in the name of Dr. Rajesh Gupta, B.A.M.S. But the invoice submitted by the petitioner in his reply bears the name of Dr. Satinder Gupta, B.A.M.S. This was also admitted by Sh. Pawan Kumar s/o Sh. Kasturi Lal (Partner-cum-C.P. of firm) M/s Harsukh Medicos, Moga. On further inquiry from Pawan Kumar s/o Sh. Kasturi Lal (Partner Cum C.P. of firm) he stated that invoice No. HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 submitted by Public Hospital, Dharamkot are edited or fabricated. On enquiry in respect of two invoices No.HM18-1419 dated 06.07.2018 and HM18-1674 dated 20.07.2018, Sh. Pawan Kumar s/o Sh. Kasturi Lal (Partner-cum-C.P. of firm) stated that these invoices were issued to Public Hospital Dr. Satinder Gupta on the request of Rajesh Gupta (petitioner). He also stated that he does not know Dr. Satinder Gupta personally. Thus, the reply of Rajesh Kumar was considered to be an after thought and unsatisfactory.

On 09.11.2021, the prosecution-respondent moved an application under Section 311 Cr.P.C. for summoning Dr. Satinder Bhushan Gupta as a prosecution witness. It was stated that the examination of the Dr. Satinder Bhushan Gupta is very material for the said case. The petitioner in his reply to the said application submitted that in fact Dr. Satinder Bhushan is the main accused in the present case. He submitted that the prosecution in connivance with Dr. Satinder Bhushan Gupta had falsely implicated him in the present case. He submitted that the prosecution ought to have moved an

application under Section 319 Cr.P.C. for arraying Dr. Satinder Bhushan Gupta as an accused which was intentionally not done. He further submitted that Dr. Satinder Bhushan Gupta had neither been cited as a witness in the list of witnesses nor his statement was recorded. Hence, the application was liable to be rejected.

The petitioner moved a separate application under Section 319 Cr.P.C. to summon Dr. Satinder Bhushan Gupta as an accused. Both the applications were pending before the Court. However, the learned Court decided the application under Section 311 Cr.P.C. moved by the respondents vide the impugned order dated 27.01.2022 but did not pass any order on the application under Section 319 Cr.P.C. moved by the petitioner. It was only later that vide order dated 21.02.2022 (Annexure P-10) the Court dismissed the application under Section 319 Cr.P.C. moved by the petitioner.

Mr. Bhalla, learned counsel for the petitioner has argued that the Court has wrongly allowed the application under Section 311 Cr.P.C. moved by the respondents to summon Dr. Satinder Bhushan Gupta as prosecution witness and erred in dismissing the application under Section 319 Cr.P.C. to summon Dr. Satinder Bhushan Gupta as additional accused. He argued that Dr. Satinder Bhushan Gupta had submitted affidavits Annexure P-1 and P-2 dated 03.07.2018 and 04.07.2018 specifically admitting that he was working as Medical Officer (In-charge) of Public Hospital, Moga and that the petitioner was working as his helper. In the affidavit he further affirmed that the 24 allopathic medicines seized during the inspection were in his custody. He stated that he could not maintain bills

in respect of some of these medicines and apologized for the same. He promised to take care in future. Mr. Bhalla, further referred to the cross-examination of the complainant Amit Bansal, wherein, he stated that the petitioner in his reply had submitted bills of Shri Sheetla Distributor, Moga and M/s Harsukh Medicos, Moga. Complainant admitted that when an invoice is issued one carbon copy of the same is retained by the person who issues the invoice. He admitted that he had not taken into possession the original invoice from the Firm M/s Harsukh Medicos and had taken only self attested copies of the invoices. He had also not taken into possession the invoice from Shri Sheetla Distributor, Moga. He had also not recorded the statements of the said two Firms nor had he taken the written reply from the said Firms. He had also not verified the documents/record received from Dr. Satinder Bhushan Gupta. He had also not taken into possession the ownership record of the building in question to find out who is the actual tenant of the shop in question. Relying on the same Mr. Bhalla, has contended that Dr. Satinder Bhushan Gupta should have been summoned as an accused and not as a witness. He argued that there was no substance to prove the allegations against the petitioner.

Mr. Sewak, on the other hand, defended the impugned orders. He argued that there is no evidence before the Court to summon Dr. Satinder Bhushan Gupta as an additional accused. The affidavits of Dr. Satinder Bhushan Gupta which the petitioner is relying on have been disputed and denied by Dr. Gupta. There is also nothing in the cross examination of the complainant Amit Bansal which can implicate Dr. Satinder Bhushan Gupta

and justify his being summoned as an additional accused. The petitioner may be able to rely in the cross examination to argue in his favour at an appropriate stage. On the other hand from the contents of the complaint itself it is clear that Dr. Satinder Bhushan Gupta is a material witness whose evidence is necessary for the just decision of the case.

Having considered the material and record and the arguments of the parties in my view there is no merit in these petitions.

The allegation in the complaint are that on receipt of some information on 20.06.2018 an inspection was conducted at the unlicensed premises of Public Hospital, Moga Road, Dharamkot District Moga. 22 types of allopathic drugs were seized from the premises. The petitioner was present there as in-charge of the unlicensed premises. The petitioner was not able to produce any valid license for sale of allopathic drugs or a Registered Medical Practitioner (RMP certificate) which could authorize him to stock allopathic drugs for sale and distribution at his premises. As per the test report of the Government Analyst Punjab the sample was declared to be 'Not of Standard Quality'.

In his reply dated 09.07.2018 the petitioner submitted the affidavit, a registration certificate (B.A.M.S) and Aadhar card of Dr. Satinder Bhushan Gupta and some purchase bills of drugs. Dr. Satinder Bhushan Gupta in his reply dated 03.08.2018 stated that the petitioner had submitted his false and fabricated documents related to the inspection.

Sandeep Sood (Partner-Cum C.P. of the Firm M/s Shri Sheetla Distributors stated that he issued invoice No.W-0001012 dated 17.05.2018

to Rajesh Kumar, Prop. of Public Hospital, Dharamkot (the petitioner). During verification of invoice No.HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 of Firm M/s Harsukh Medicos, Moga submitted by the petitioner in his reply it was found that these two invoices differed from the invoices issued by the Firm M/s Harsukh Medicos, Moga. Firm M/s Harsukh Medicos, Moga had issued invoice No.HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 to M/s Public Hospital, Dharamkot in the name of Dr. Rajesh Gupta, B.A.M.S. But the invoice submitted by the petitioner in his reply bears the name of Dr. Satinder Gupta, B.A.M.S. Sh. Pawan Kumar (Partner cum C.P. of firm) M/s Harsukh Medicos, Moga stated that invoice No.HM18-809 dated 26.05.2018 and HM18-1117 dated 15.06.2018 submitted by Public Hospital, Dharamkot are edited or fabricated. On enquiry in respect of two invoices No.HM18-1419 dated 06.07.2018 and HM18-1674 dated 20.07.2018, Sh. Pawan Kumar (Partner cum C.P. of Firm) stated that these invoices were issued to Public Hospital Dr. Satinder Gupta on the request of Rajesh Gupta (petitioner). He also stated that he does not know Dr. Satinder Gupta personally.

From the above, it is clear that the petitioner was found present when the inspection was conducted. The invoices were issued in his name. The invoices submitted by him bearing the name of Dr. Satinder Bhushan Gupta were edited and fabricated. In two invoices the name of Dr. Satinder Bhushan Gupta had been mentioned on his asking. The affidavits of Dr. Gupta which the petitioner had submitted have been disputed by Dr.

Satinder Bhushan Gupta. Thus, there is nothing in complaint or even in the cross examination of the complainant Amit Bansal which can implicate Dr. Satinder Bhushan Gupta and justify his being summoned as an additional accused.

On the other hand from the material it is apparent that the examination of Dr. Satinder Bhushan Gupta is very material for the just decision of the case. He would depose as to the veracity of the affidavits relied on by the petitioner and regarding the invoices submitted by the petitioner. It would be open to the petitioner to cross examine him.

In view of the above, both the petitions being devoid of merits, are dismissed.

July 04, 2022
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No