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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55200-2022 (O&M)
Date of Decision: 29.11.2022

Pardeep Kumar

....Petitioner(s)

Versus

State of Punjab and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Meenu, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the complaint No. 20/2022 dated 17.03.2022, under Section 18(a) (i) read with Section 27 (d) of the Drugs and Cosmetics Act, 1940 and also the summoning order dated 17.03.2022 (Annexure P-6) and all the subsequent proceedings.

It has been submitted by the learned counsel for the petitioner that the petitioner was neither the owner nor licence holder of the medicine shop but he was given the charge of cleaning and opening the shop from 16.11.2020 to 18.11.2020 because the co-accused namely Seema Rani who is proprietor of the medical agency was admitted in the hospital and he was not aware with regard to the stocking of any tablets in contravention with the provisions of the Drugs and Cosmetics Act and therefore, so far as the

present petitioner is concerned, the complaint and the summoning order against him are liable to be quashed. She further submitted that no offence under Section 18 (a) (i) read with Section 27 (d) of the Drugs and Cosmetics Act is made out and no notice was sent to the petitioner by the complainant to explain his stand in the whole episode and therefore, the complaint and the summoning order are liable to be quashed qua the petitioner.

I have heard the learned counsel for the petitioner.

Vide Annexure P-1 a complaint was filed by the State through Drugs Inspector, Moga against one Seema Rani, proprietor of M/s. H.R. Medical Agency and also the present petitioner namely Pardeep Kumar, employee-cum-incharge of the aforesaid M/s. H.R. Medical Agency. The allegations in the complaint were that on 16.11.2020 the complainant along with Inspector Jaswinder Singh, STF, Moga inspected the firm M/s. H.R. Medical Agency, near Dr. Kultar Singh, Bhim Nagar, Camp Road, Moga and during inspection, the present petitioner who is an employee of the firm was present as incharge of the firm. During inspection he failed to produce purchase record of 9 types of allopathic drugs as required under Section 18-A of Drugs and Cosmetics Act, 1940 and so these drugs were seized on Form-16 which was signed by the present petitioner and team members. The seized drugs were packed in one cardboard box and sealed with the seal bearing impression 'SG' and the box was signed by the team members and the present petitioner namely Pardeep Kumar. It was found during inspection that the petitioner was found having stocked unlabeled tablets for sale and distribution on his shop and these tablets were suspected to contain Tramadol, Tapentadol, Paracetamol or Diclofenac Sodium and the same were drawn as sample by the complainant for the purpose of test and analysis on Form 17. All the four sample portions were

packed and sealed with the seal bearing impression 'SG' in the presence of the present petitioner namely Pardeep Kumar, incharge of the firm. The sample portions were marked as sample No.MG/SG/2020/53 as detailed in Form 17. All the sealed sample portions were signed by the team members and the present petitioner namely Pardeep Kumar. The seized drugs were also produced before the learned CJM, Moga on 17.11.2020 and the custody orders were obtained from the Court. Thereafter on the same day, one sealed sample was sent for test and analysis to the Govt. Analyst, Punjab, Kharar and the aforesaid unlabeled white coloured tablets were found to be having Tramadol. Thereafter, the complainant had sent a registered letter alongwith the original test report to the aforesaid M/s. H.R. Medical Agency to explain its position and also to disclose the source of acquisition under Section 18-A of the Drugs and Cosmetics Act and also to provide valid permission to stock said drug for sale and distribution under Section 18-C of the aforesaid Act. Thereafter, a reply was filed by the proprietor namely Seema Rani who is a co-accused in the present case in which she mentioned that she was admitted in Amrit Hospital, Moga from 16.11.2020 to 18.11.2020 and the present petitioner namely Pardeep Kumar was at the premises at the time of inspection. The accused failed to produce any purchase record of the drug in question and also failed to produce valid permission for stocking the Tramadol formulations. The aforesaid Seema Rani, proprietor of the firm stated in her reply that she handed over the shop to the present petitioner Pardeep Kumar on the day of inspection.

A perusal of para No.1 of the reply (Annexure P-5) filed by the aforesaid Seema Rani co-accused would show that it has been so stated by the aforesaid Seema Rani that she is wife of Pardeep Kumar and the address is the

same which has been mentioned as address of the aforesaid Pardeep Kumar. In para No.2 it has been so stated by her that she has no personal knowledge that the business premises were inspected by the complainant as she was not present at the premises. She has further stated in the reply that on 15.11.2020 she was unwell and had pain in abdomen and that she is a widow. Since she had a medical problem, she had requested the Pardeep Kumar whose house is close to the aforesaid M/s. H.R. Medical Agency to look after it in her absence as she had acquaintance with him as the shop has been taken on rent from his wife. It is further stated in the reply by her that the petitioner is competent to deal in medicines etc. as he was earlier running Sandeep Medical at Moga i.e Chemist Shop near M/s. H.R. Medical Agency. Therefore, from the reply it appears that some material contradictions have come with regard to the status of the co-accused Seema Rani as being either wife of the petitioner or acquaintance of the petitioner but she has categorically stated in the reply that the petitioner was competent to deal in medicines as he was earlier running another medical shop at Moga.

However, a perusal of para No.5 of the present petition which has been filed by the petitioner would show that he has stated that he was handed over the charge of the shop only for the purpose of cleaning and opening purposes which appears to be contrary to the reply filed by the co-accused Seema Rani. As per Section 27(A) of Drugs and Cosmetics Act whenever a person who himself or by any other person manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes in contravention with the provision of the Act can be made liable. Under Section 18 (a) (i) of Drugs and Cosmetics Act it has been so provided that no person shall himself or by any other person on his behalf manufacture

for sale or for distribution or sell or stock or exhibit or offer for sale or distribute any drug which is not of a standard quality, or is misbranded, adulterated or spurious.

Therefore, the argument raised by the learned counsel for the petitioner that no offence is made out cannot be accepted at this stage.

This Court does not wish to observe anything on the merits of the case but is of the view that there is no ground available with the petitioner seeking quashing of the complaint and the summoning order. None of the parameters contained in the judgment of the Hon'ble Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 SCC (CrL) 426* is fulfilled.

Consequently, the present petition is dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

29.11.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No