

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.649 of 2019**

Arising Out of PS. Case No.-41 Year-2018 Thana- KHARHAGPUR District- Munger

BINOD KUMAR @ DR. BINOD KUMAR @ BINOD KUMAR SAH
Shivnath Sah Village- Pachhim Azimganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kamal Kishore Jha
For the Opposite Party/s : Mr. Satya Nand Shukla

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER**

5 26-06-2023 Heard learned counsel for the parties.

This application is filed for quashing the order dated 20.07.2018 by which learned Chief Judicial Magistrate, IV, Munger has taken cognizance against the petitioner in Kharagpur P.S. Case No. 41/2018/G.R. No. 377 of 2018 for the offence under Sections 27 (B) (ii) and 27 (d) of the Drugs and Cosmetic Act, 1940.

As per prosecution, a team consisting vide memo no. 218 dated 05.02.2018 of Chief Medical Officer, Munger and vide memo no. 54 dated 05.02.2018 of incharge Chief Medical Officer, Primary Health Centre, Kharagpur conducted an inquiry in the premises of M/s Shivam Medical Store Kharagpur. During inquiry they found some medicines kept in a neighbouring room of the medical store and on demand Basanti



Devi, wife of Dr. Binod Kumar showed inability to produce license and hence the medicine was seized. On the basis of written report of Medicine Inspector, Munger, in Kharagpur P.S. Case No. 41/2018 was lodged against the petitioner.

It has been submitted by learned counsel for the petitioner that after the search and seizure his drugs license has been cancelled for violation of rules of Drug And Cosmetics Act and the cancellation of the drugs license has not been challenged by the petitioner. Learned senior counsel further submits that no criminality is involved in the matter as for the first offence until and unless the complicity of the petitioner is found by the authorities, the drugs license of the petitioner could not have been cancelled for the fault of the agent/ salesman under the act. For some minor infraction of the conditions of the drug license, the petitioner cannot be prosecuted vicariously as he was the owner of the shop.

Learned counsel for the State has submitted that he has sought instruction from the Superintendent of Police, Munger and Superintendent of Police, Munger has informed the learned APP that the prosecution of the petitioner has been referred to the drugs department in view of the judgment of this Court.



I have heard and considered the submissions made by the learned senior counsel for the petitioner and learned APP for the State and for such minor infraction for which license of the petitioner could have been suspended. He has already been punished and his drug license has been cancelled. No criminality has been found in the matter and it seems that the Drug Inspector has exceeded his jurisdiction by filing this case.

In view of the above, I am inclined to quash the entire prosecution of the petitioner.

Accordingly, this application is allowed.

The order dated 20.07.2018 by which cognizance has taken against the petitioner in Kharagpur P.S. Case No. 41/2018/G.R. No. 377 of 2018, is hereby quashed.

(Sandeep Kumar, J)

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