

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15139 of 2018

Arising Out of PS. Case No.-444 Year-2014 Thana- GANDHIMAIDAN District- Patna

1. Rakesh Mishra and Ors S/o Dr R.P. Mishra RAVIAN Pharmaceuticals Limited R/o- 403, Ranjan Plaza, Colony More, Kankarbagh, P.S. Kankarbagh, Patna.
2. Vijay Kumar Shahi, S/o Late Raghwendra Prasad Shahi, R/o- A-25, Phase-1, Ashianagar, P.O. Ashiana, P.S. Rajiv Nagar, Town and District- Patna.
3. Sushil Kumar, S/o Late Mathura Prasad Singh, R/o Village- Ramdiri, P.S. Begusarai Muffasil, District- Begusarai.
4. Ajay Shahi, S/o Late Raghwendra Prasad Shahi, R/o Village- Shahi Minapur, P.S.- Aurai, District- Muzaffarpur.
5. Ranjan Shahi, S/o Late Ram Bihari Shahi, R/o Village- Shahi Minapur, P.S.- Aurai, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar Through Principal Secretary, Department Of Health.
2. Joint Secretary, Department of Health, New Secretariat, Patna- 800001.
3. Inspector of Drugs, Patna- 2 New Gardinar Road Hospital Campus, Near Income- Tax Golambar, P.S. Kotwali, Town & District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate
		Mr. Dayanand Singh, Advocate
For the Opposite Party/s	:	Mr. Anil Kumar Singh 1, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

14 12-05-2023 Heard learned counsel for the parties.

2. This application has been filed for quashing of the order dated 08.08.2016 passed by the Judicial Magistrate, First Class, Patna, by which the Magistrate has taken cognizance against the petitioners for the offences under Section 420 of the Indian Penal Code and under Sections 18(c)/27(b)(ii) of the Drugs and Cosmetics Act, 1940.



3. As per the prosecution case, the Managing Director-cum-Authorized person namely Rakesh Mishra of M/S Ravian Pharmaceuticals Pvt. Ltd. had obtained a fresh license for sale of drugs bearing Nos. PAT-554/2012 and PAT-554A/2012 by filing a false affidavit. The organization after its change of place is now situated in Sri Ram Tower, Main Road, Kankarbagh, Patna. It is also alleged that the M/S Ravian Pharmaceuticals Pvt. Ltd. had license bearing nos. WHQ-100/07 and WHQ-100A/07 issued in the name of Director-cum-Authorized person, which was valid until 17.04.2012. However, it had come to the light that the said organization even after expiry of validity period of license, had carried out sale of drugs from 18.04.2012 to 18.12.2012 whereas the Managing Director, Sri Rakesh Mishra while applying for a license has categorically mentioned in the declaration form that earlier organization was closed. It is also alleged that without valid license the business of drug is prohibited under section 18(c) of the Act and is punishable under Section 27(b)(ii) of the Drugs and Cosmetic Act, 1940.

4. Learned Senior Counsel for the petitioners submit that upon expiry of a license, a grace period of six months is given by which time the company is required to renew



its license and as such, the petitioners' company filed an application for renewal of the license. Accordingly, license for the period 2012-17 was issued on 18.12.2012, whereafter, when the company changed its premises from Kabari Gali, Patna to Sri Ram Tower, Patna, a fresh license was duly applied for and granted on 01.04.2013 which was valid up to 31.03.2017.

5. Learned Senior Counsel for the petitioners further submits that the allegation that false declaration was made on behalf of the company that the business of the company is closed was not in fact a false declaration at all as the operations of M/S Ravian Pharmaceuticals Private Limited had ceased on 05.05.2009 itself upon it being incorporated into the present company i.e. M/S Ravian Pharmaceuticals Limited. The above fact shall be manifest from the income tax return filed in the name of the new company for the assessment years 2010-11-12, 2012-13, 2013-14 and 2014-15.

6. Learned Senior Counsel for the petitioner further submits that newly incorporated company i.e. M/S Ravian Pharmaceuticals Limited has also paid Sales Tax and VAT throughout. He further submits that from the plain reading of the complaint, it is evident that no offence under Section 420 of Indian Penal Code has been committed by the petitioners. The



necessary ingredients for making out the offence under Section 420 of the Indian Penal Code against the petitioner is missing in the present case.

7. Learned counsel for the petitioner further submits that on the same facts another complaint case bearing Complaint Case No. 404(C-2) of 2015 has been filed by the same Drug Inspector, who has filed Gandhi Maidan P.S. Case No. 444/2014. Thereafter, the petitioners filed Criminal Miscellaneous No.21315 of 2017. On 05.12.2017, the following order has been passed in Cr. Misc. No. 21315 of 2017:-

“This application under Section 482 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) has been filed by the petitioners for setting aside the order dated 31.08.2016 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 404 (C-2) of 2015 whereby a prima facie case has been found to be made out against the petitioners under Sections 27(b)(ii) of the Drugs and Cosmetics Act, 1940 and Section 420 of the Indian Penal Code and they have been summoned to face trial.

It is submitted by the learned counsel for the petitioners that for the same set of allegations, earlier a police case vide Gandhi Maidan P. S. Case No. 444 of 2014



has been instituted against the petitioners in which the investigation has been completed and a report under Section 173(2) of the Cr.P.C. has been submitted in the court pursuant to which cognizance of the offence has already been taken. He submitted that for the same set of allegations, a person cannot be prosecuted twice by way of two separate proceedings. When the attention of the learned counsel for the petitioners has been drawn towards the provisions prescribed under Section 210 of the Cr.P.C. in respect of the procedure to be followed when there is a complaint case and police investigation in respect of the same offence, learned counsel for the petitioners has sought leave to withdraw the present application in order to file an appropriate application under Section 210 of the Cr.P.C. before the court of Magistrate. Leave is granted. The application is disposed of.”

8. It has also been submitted that in pursuance of the aforesaid order, the petitioners has filed an application under Section 210 of the Code of Criminal Procedure before learned Chief Judicial Magistrate, Patna and the same is pending adjudication.

9. Learned learned Senior Counsel appearing



for the petitioners also submits that the impugned order dated 08.08.2016 by which cognizance has been taken against the petitioners is a mechanical and non-speaking order and cannot be sustained.

10. Learned senior counsel for the petitioners has relied upon the judgments of Hon'ble Supreme Court in the case of *Mehmood Ul Rehman and Ors. vs. Khazir Mohammad Tunda and Ors.* reported in (2015) 12 SCC 420; *Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors.* reported in (1998) 5 SCC 749; *Devendra and Ors. vs. State of U.P. and Ors.* reported in (2009) 7 SCC 495 and *the State of Karnataka and Ors. vs. Pastor P. Raju*, reported in (2006) 6 SCC 728.

11. Learned senior counsel for the petitioners has also submitted that no criminal case is made out against the petitioners in view of the absence of *mens rea*.

12. By making the aforesaid submissions, learned Senior Counsel for the petitioners submits that this Court may quash the impugned order of cognizance.

13. Learned APP for the State has opposed the case of the petitioners and has submitted that the offences as alleged have been made out against the petitioners and the



violation on various provisions of Drugs and Cosmetics Act will result in criminal prosecution of the petitioners.

14. I have considered the submissions of the parties. I have also gone through the records of this case. From reading of the F.I.R., it appears that there is general and omnibus allegation against these petitioners. The petitioners company namely M/S Ravian Pharmaceutical Private Limited was incorporated in the year 1996 and it had the requisite Drugs license. The said company was converted from private limited company to public limited company on 05.05.2009 and the name of the company was changed to M/S Ravian Pharmaceuticals Limited. It appears that an information was sent by the petitioners company to the concerned Drug Inspector regarding the change of the name of the company and this fact has also been admitted by the respondents in their counter affidavit. In paragraph no. 9 of the counter affidavit, it has been stated that “further the petitioner no. 2 through his letter dated 21.05.2009 inform the State Drugs Controller regarding the change in the name from M/S Ravian Pharmaceuticals Private Limited to M/S Ravian Pharmaceuticals Limited.” The respondents have also admitted that due taxes were being filed by the said M/S Ravian Pharmaceuticals Limited. After reconstitution of the company



requisite license was granted in the name of changed company i.e. M/S Ravian Pharmaceuticals Limited for a period from 09.04.2012 to 08.04.2017. Rule 63(3) of the Drugs and Cosmetic Act, 1945 provides six months grace period for renewal of the license and therefore after expiry of license period i.e., on 17.04.2012, the license is deemed to be extended till 17.10.2012 and as such, the period from 18.04.2012 to 17.10.2012 cannot be said to be without license. As and when, the company realized that the license has expired, necessary action was taken for issuance of fresh license and the same was granted on 19.12.2012. Further, the present F.I.R. was lodged after two years of issuance of fresh license to the petitioners company. Therefore, in the opinion of this Court, the petitioners had no intention to sale the drug without license.

15. Moreover, the order of cognizance dated 08.08.2016 passed by the Magistrate is a non-speaking order, which suffers from non-application of mind. An order for prosecuting the petitioners without considering the materials collected during investigation cannot be sustained. Moreover, for prosecuting the accused persons individual allegation must be there in the F.I.R. as well as during investigation. The accused cannot be prosecuted for doing a business under a valid Drugs



License and in absence of *mens rea* I am of the opinion that the prosecution of the petitioners is an abuse of the process of the Court.

16. The Hon'ble Supreme Court in the case of ***Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors. (1998) 5 SCC 749*** the paragraph no. 28 has been quoted hereinbelow:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record



and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

17. For the foregoing reasons, this Court is of the considered view that the prosecution of the petitioners is an abuse of the process of the Court. Hence, the F.I.R. vide Gandhi Maidan P.S. Case No. 444/2014 and all consequential proceedings arising out of the aforesaid F.I.R. including the order of cognizance dated 08.08.2016 passed by the learned Magistrate are hereby quashed.

(Sandeep Kumar, J)

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