

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

1. CRM-M No.9125 of 2021

Vineet Bhagat

... Petitioner

Versus

State of Haryana & another

... Respondents

2. CRM-M No.14281 of 2021

Saajan Gupta

... Petitioner

Versus

State of Haryana & others

... Respondents

Date of decision: 17th February, 2023

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.P.S. Ahluwalia and Mr. Vishal Aggarwal, Advocates
for the petitioners.

Mr. Chetan Sharma, Assistant Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J.

Both the petitions detailed hereinabove are being decided by this common order. The petitioners in both the petitions are seeking quashing of FIR No.17 dated 03.02.2021 under Sections 188, 420 IPC and Section 18(c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as, 'the Act').

Before proceeding further, it would be relevant to give a brief run up to the sequence of events leading to the filing of the instant petition.

The complainant/respondent No.2 received information from Ayush Haryana on 02.02.2021 qua some medicines being manufactured, without valid permission, by Shama Biotech at Plot No.46, Shahbad Road, Sector 1, Industrial Area, District Ambala. Thereafter, he along with his team inspected the aforesaid premises of Shama Biotech on the same day. During inspection, the complainant/respondent No.2 found stocks of 8 different types of Ayurvedic medicines, however, the Production Manager of the firm, who was present there, on being asked was unable to furnish any permission/license for production of the aforesaid ayurvedic medicines. The petitioner Vineet Bhagat being owner of the Shama Biotech was contacted through phone, who expressed his inability to come present at the spot. Accordingly, the complainant/respondent No.2 gave a notice as per form 15 of Drugs and Cosmetics Act to the Production Manager Mr. Khalid Raza and directed him not to dispose of the stock of medicines for 20 days and to store the entire stock inside the premises. Subsequently, petitioner Vineet Bhagat reached at the spot at 10 p.m. and in his presence the respondent No.2/complainant took three samples of the 7 types of Ayurvedic medicines, sealed them and sent them for testing to State Drug Testing Lab, Ayush Deptt., Kurukshetra. Thereafter, on the next day i.e. 03.02.2021, the FIR in question was registered at the instance of complainant/respondent No.2 for commission of offence under Section 18(c) of the Drugs and Cosmetics Act, Sections 188 and 420 IPC.

Learned counsel for the petitioners contend that the FIR in question is a gross misuse of the process of law and it has been registered in blatant violation of the statutory provisions of law. While inviting the attention of this Court to the allegations levelled in the FIR, which has been annexed as Annexure P-1, learned counsel have argued with vehemence that on a bare perusal of the FIR, the ingredients of the offences alleged therein are not even made out. It has been further urged that it is no longer res-integra that for offences falling under Chapter IV of the Act, neither can the police register an FIR, nor investigate into the said offences. It is only the Drug Inspector who can investigate into the commission of offences under the Act, and thereafter, directly move a complaint before the Court of law. Hence, it is abundantly clear that the FIR in question had been wrongly and illegally registered in blatant violation of the provisions of Section 32 of the Act. Learned counsel have further argued that the offences under the Indian Penal Code (hereinafter referred to as, 'the Code') had been added by the police only with an oblique motive so as to circumvent the provisions of Section 32 of the Act.

In support of their submissions, learned counsel for the petitioners have placed reliance upon '**Union of India vs. Ashok Kumar Sharma**' 2020 RCR (Criminal) 726(3).

Per contra, learned State counsel while vehemently controverting the submissions made by the counsel opposite, has argued that as per the provisions of Section 32 Sub-Section (3) of the

Act, police is empowered to investigate and prosecute a person under any other law, if he has committed any act or omission which constitutes an offence against Chapter IV of the Act. He submits that since the offences of cheating and forgery were also found to have been committed by the petitioners along with an offence under Section 18(c) of the Act, the police was duty bound under Section 154 Cr.P.C. to register an FIR against the petitioners. He submits that there was no bar for the police to register an FIR and carry out investigation if the alleged offences were committed both under a special law and under the Code. Learned State counsel has further argued that technicalities of procedural law could not be allowed to come in the way of punishing those guilty of committing offences and even, assuming for the sake of arguments, though not conceded, that the statutory provisions had been violated in registering the FIR, it could not be a ground to let the petitioners go scot-free, more so, when the FIR in question was registered pursuant to a complaint given by the Drug Inspector.

In support of his submissions, learned State counsel has placed reliance upon a judgment rendered by Allahabad High Court in **‘Maan Singh vs. State of U.P. Thru. Prin. Secy. Home Lucknow & another’ Appl. No.8784 of 2019 d/o 07.07.2022.**

I have heard learned counsel for the parties and perused the relevant material on record.

The short question which arises for consideration of this Court is as to whether or not an FIR can be registered for commission

of offences under Chapter-IV of the Act, and further, if the police has the power to investigate into and prosecute the offenders with respect to the aforesaid offences.

Before proceeding further, it would be apposite to reproduce section 32 of the Act, which reads as under:

“32. Cognizance of offences —

(1) No prosecution under this Chapter shall be instituted except by —

a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

A bare perusal of the aforesaid provisions makes it abundantly clear that prosecution under Chapter IV of the Act can be initiated only by those persons/associations who have been specified

therein, and that too, only after following the procedure provided for in the said regard, under the Act.

A police officer is not included in the list of persons/authority who can institute prosecution under Section 32 of the Act. Hence, this Court has no hesitation in holding that a police officer could not have initiated prosecution under Chapter IV of the Act. However, there is an exception to this, provided under Section 32(3) of the Act which would be dealt with later-on.

After the registration of an FIR, investigation is carried out by the police which culminates either in the filing of a police report under Section 173 Cr.P.C. or a cancellation report, as the case may be. When a police report is forwarded, the Magistrate under Section 190 Cr.P.C. is competent to take cognizance of the offences and thereafter, proceed in accordance with the provisions of the Code. However, since the Act is a special enactment, its provisions hold precedence over the general law including the Code.

Section 32 of the Act specifically provides the manner of taking cognizance of the offence under Chapter IV, i.e. on a complaint moved by an Inspector; or any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or the person aggrieved; or a recognised consumer association whether such person is a member of that association or not.

Therefore, it is only when such a complaint is moved by the person specified in the Act, that the Magistrate on being satisfied can take cognizance of the offences under Chapter IV of the Act, after following due procedure as provided for under the Code and thereafter commit the case to the Court of Sessions for trial of the offences alleged.

In the aforementioned circumstances, since the Magistrate would not be able to take cognizance of offences under Chapter IV of the Act on a police report, there would be a bar on the police to submit a police report under Section 173 of Cr.P.C. Further, the police would not be competent to register an FIR qua the offences under Chapter IV of the Act and carry out investigation. Merely because the complainant is a Drug Inspector, would not empower the police to register an FIR for commission of offences under Chapter IV of the Act.

Section 32(3) of the Act provides that nothing contained in Chapter IV shall prevent any person from being prosecuted under any other law for any act or omission constituting an offence against this Chapter, therefore the police can register an FIR only qua such other offences which are provided for under Section 32(3) of the Act. However, at the same time it does not authorize or empower the police to register a common FIR qua the acts and omissions constituting an offence under any other law, and also for acts and omissions constituting offences under Chapter IV of the Act.

Hon'ble the Supreme Court, in '**Union of India vs. Ashok Kumar Sharma**' (*supra*) while dealing with an identical issue under the Act, has settled the controversy and held as under:

"150. Thus, we may cull out our conclusions/directions as follows:

- I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.*
- II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.*
- III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.*
- IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to*

cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

- V. *It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.*
- VI. *Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.*

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers.”

As a sequel to the above discussion and in the light of the law laid down by Hon’ble the Apex Court in ‘**Union of India vs. Ashok Kumar Sharma**’ (supra), this Court has no hesitation in holding that the police could not have registered the FIR in question, which, thus, deserves to be quashed.

Both the instant petitions stand allowed accordingly and the FIR (Annexure P-1) is quashed.

At this stage, learned State counsel has prayed for being granted liberty to proceed against the petitioners under the relevant statutory provisions.

In view of the prayer made by the learned State counsel, the State is granted liberty to proceed against the petitioners in accordance with law.

(MANJARI NEHRU KAUL)
JUDGE

February 17, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No