

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18517 of 2021

Arising Out of PS. Case No.-329 Year-2018 Thana- BISFI District- Madhubani

Mithilesh Yadav S/O Sri Janak Yadav R/O Village- Bhatara Ghat, P.S-Bisfi,
District- Madhubani

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sujeet Kumar Singh, Advocate

For the Opposite Party/s : Mr. Satendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 06-09-2024

Heard Mr. Sujeet Kumar Singh, learned Advocate for
the petitioner and the learned APP for the State.

2. The petitioner by invoking the inherent jurisdiction
of this Court seeking quashing of the order dated 22.04.2019,
passed by the learned Sessions Judge, Madhubani, arising out of
Bisfi P.S. Case No. 329 of 2018 (N.D.P.S. Case No. 02 of 2019)
whereby and whereunder, the learned Sessions Judge,
Madhubani was pleased to take cognizance for the offences
punishable under Section 27(b)(ii), 28 (b) and 28 (d) of the
Drugs and Cosmetics Act, 1940 (hereinafter referred to as the
“Act, 1940”) against the petitioner without having any material
against him.

3. The very challenge of the impugned order, arising



out of Bisfi P.S. Case No. 329 of 2018, instituted by the Drugs Inspector, Madhubani, is based upon Section 32 of the Act, 1940 and the Amendment Act, 2008, which bars police investigation after registering an FIR in respect of any offence under the Act, 1940 and only a complaint petition is mandated by Section 32 of the Act was to be preferred by the persons, associations or the Drug Inspector.

4. In support of the aforesaid contention, learned Advocate for the petitioner relies upon a judgment of this Court in the case of ***Sunil Kumar Sah @ Sunil Prasad and Anr. Vs. The State of Bihar and Anr., (Cr. Misc. No. 45129 of 2012)*** wherein, the Court has held that the police cannot institute the F.I.R. and investigate the case and file charge-sheet, in view of Section 32 of the Act, 1940. Hence no cognizance can be taken under the Drugs and Cosmetics Act on the basis of charge-sheet submitted by the police.

5. Adverting to the aforesaid fact, learned Advocate for the petitioner thus contended that the very initiation of the proceeding by instituting the First Information Report by the Drug Inspector leading to filing of charge-sheet and order taking cognizance is illegal. Moreover, no materials have collected during the course of investigation that the wooden shop belongs



to the petitioner. However, in course of arguments, learned Advocate for the petitioner fairly submitted that the issue with regard to the correctness of all such judgments or orders that laid down as a general proposition that Section 32 of the Act bars police investigation after registering a FIR in respect of any offence under the Drugs and Cosmetics Act, 1940 and only a complaint petition as mandated by Section 32 of the Act was to be preferred, have been referred before the learned Special Bench of this Court in the case of ***Bablu @ Rajesh Kumar Vs. The State of Bihar & Ors., 2021 (3) PLJR 220***, wherein the learned Special Bench has answered as follows:

“90. After answering the reference, I deem it proper to issue following directions keeping in view the ramification of the matter:-

(i) In the FIRs instituted in respect of the offences under Chapter III and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma (supra) and where investigation has been completed and cognizance has been taken by the court and the cases have travelled beyond the stage of cognizance shall be saved and the prosecution shall continue as per the provisions prescribed under the Cr.P.C.

(ii) The cases in which the FIRs were instituted in respect of the offences under Chapter III and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma (supra) and where investigations have not been completed, all previous acts of the police officer including the investigation and the material collected in course of investigation and the pending proceedings shall be saved on account of de facto doctrine and only the prosecution



of the cases shall be handed over to the concerned Drug Inspector, who shall prosecute through Public Prosecutor or the Special Public Prosecutor, as the case may be.

(iii) In such cases, any action taken by the police, except handing over the case to Drug Inspector, after the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma (supra) shall be a nullity in the eye of law.

(iv) During argument, we have been told that there are many cases where FIRs have been registered in regard to cognizable offences falling under the Drugs and Cosmetics Act, 1940 and the pending investigations prior to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma (supra) have not been handed over to Drug Inspector till date. In all such cases, it would be the responsibility of the Director General of Police of the State of Bihar to ensure that pursuant to the directions of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma (supra), those cases should be handed over by the police to the concerned Drug Inspectors as early as possible, but no later than one month from the date of receipt of a copy of this order.

(v) In all such FIRs registered for the offences punishable under the Drugs and Cosmetics Act, 1940 in which the samples of drugs and cosmetics had been sent for test or analysis and the samples were analyzed or tested and were found misbranded, spurious or adulterated by the Government Analyst and the report has been received during investigation, the concerned Drug Inspector shall be individually responsible to file prosecution report before the court and to take action on the same in accordance with law as early as possible and preferably within a further period of one month from the date of receipt of the FIR and other materials collected during investigation from the police.

(vi) The Drug Controller, State of Bihar shall also be individually responsible to ensure compliance of the directions made in para (v) by this Court."

6. Drawing the attention of this Court to the reference



answered by the Special Bench in Clause 90 (i), learned Advocate for the petitioner submitted that it clearly mandate that only those cases shall be saved where the investigation has been completed and the cognizance has been taken by the Court and the cases have travelled beyond the state of cognizance. However, in the present, the case is still at the stage of cognizance and no further proceeding has taken place is the contention of the learned Advocate for the petitioner.

7. Learned Advocate for the petitioner further drew the attention of this Court to Clause (v) of para 90, which mandate the concerned Drug Inspector to file prosecution report before the Court within a period of one month from the date of receipt of the FIR and other materials collected during investigation from the police. It is, thus, contended that admittedly in the case in hand, no prosecution report has been filed even before passing the impugned order taking cognizance.

8. On the other hand, learned Advocate for the State countering the submission of the petitioner submitted that the Special Bench of this Court in no uncertain term has held, the FIR instituted in respect of offence under Chapter III and IV of the Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Ashok Kumar Sharma*



& Ors., 2020 SCC Online SC 683, wherein investigation has been completed and cognizance has been taken, is saved under the mandate of law.

9. Having heard the learned Advocate for the respective parties and taking note of the judgment by the learned Special Bench (*supra*), this Court finds substance in the submissions of the learned Advocate for the State.

10. Suffice it to say that the judgment of the ***Ashok Kumar Sharma (supra)*** was rendered on 28.08.2020, whereas in the present case, the charge-sheet has been submitted on 31.12.2018 and the cognizance has taken on 22.04.2019 itself. Thus, the investigation and the order taking cognizance cannot be faulted and obviously saved by the decision of Apex Court. So far the second contention of the petitioner is concerned, which mandate filing of the prosecution report by the Drug Inspector within a stipulated period, the same is by way of a guidelines and in absence of any consequences thereof, it cannot lead to quashing of the order taking cognizance.

11. Undisputedly, in the case in hand, the order taking cognizance came to be passed on 22.04.2019 and the same is fixed for appearance. A report was called for with regard to the status of the case in hand and it has been apprised to this Court



that now the process under Section 83 has already been issued against the accused as he has not ensured his presence before the Court. Only on account of non appearance of the petitioner-accused, he cannot be allowed to take the plea that the matter has not been proceeded beyond the order taking cognizance.

12. This Court is satisfied that once the cognizance has been taken prior to the passing of the order/decision in the case of *Ashok Kumar Sharma (supra)*, the entire investigation and the order taking cognizance cannot be faulted and thus completely saved. So far the argument of the petitioner with regard to the submissions of the prosecution report is concerned, the same is only directory in nature and non compliance thereof, would not lead to quashing of the order taking cognizance, in absence of any consequences stipulated.

13. The quashing application, having no merit, stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
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