

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35013 of 2015

Arising Out of PS. Case No.-322 Year-2011 Thana- PHULWARISHARIF District- Patna

Md. Sami Iqbal @ Sami Iqbal son of Mansoor Alam Resident of Village -
Choti Telpa, Chapra, District - Saran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Gautam Kumar Kejriwal, Advocate
	:	Mr. Alok Kumar Jha, Advocate
	:	Mr. Mukund Kumar, Advocate
	:	Mr. Akash Kumar, Advocate
	:	Mr. Aditya Raman, Advocate
For the Opposite Party	:	Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-02-2024

This application has been preferred by the petitioner for quashing the order dated 09.01.2003, passed by learned Chief Judicial Magistrate, Patna in Phulwarisharif P.S. Case No. 322 of 2011/Special – 3/13, whereby cognizance has been taken against the petitioner under Sections 419, 420, 463, 464, 274 and 275 of Indian Penal Code read with Sections 18(A), 17[B], 18[C], 27(D), 27(c), 27(b)(ii), 28 and 28[A] read with Section 36 (A) (C) of the Drugs & Cosmetics Act, 2008.

2. The case of prosecution, in short, is that on 13.07.2011, an inspection of the workshop of M/s Grace Pharmaceuticals was made at Phulwarisharif, Patna by a team constituted under the order of State Drug Controller, Bihar, Patna.



It is further alleged that upon inspection of the premises, it was found that manufacturing activities was going on without any valid license and approval and in presence of competent persons, production of drugs excess and different to the limits of license, absence of proper labeling of the stock of the raw material and non-production of the purchase invoices of the raw material, absence of analytical report, violation of provision of Schedule (M) of the Act, production of banned drugs, amounting to offences under the provisions of banned drugs, amounting to offences under the provisions of Drugs Cosmetics Act, 2008. It is further alleged that production of drugs in absence of proper approval and license also made out an offence of cheating on account of causing loss to the government revenue, sales tax, income tax etc. The inspection was followed by preparation of a report, seizure of stock, records, registers and other documents from the premises, the seizure of original license and renewed license as well and other documents which formed part of the First Information Report.

3. The inspection report dated 13.07.11 signed by two Drug Inspectors, one Licensing authority, Assistant Drug Controller and one Police Officer shows that a team constituted of the said persons made an inspection where production was going on in the said workshop wherein one Md. Raza was putting seals



over the filled bottles of the drugs and another Md. Iqbal was sticking labels over such filled bottles. It is further stated that other accused persons stated about the said workshop belongs to one Sami Iqbal, who happened to be the son-in-law of accused Abdul Sami and it was also stated that all the concerned licenses were in the name of Sami Iqbal only. It further appears in the report that accused Abdul Sami also produced copy of license and renewal thereof before the inspecting team, where in terms of the manufacturing license, the competent persons like manufacturing chemist and analytical chemist were not present, while the production activity was going on. It is further stated that both the ground floors and first floor of the premises were duly covered under license. It further appears from report that the control samples, batch manufacturing record, standard operating procedures, master formula record, batch packaging record and finished goods registers were not found at the premises, where labeling of raw materials was not in accordance with the rules. It further appears that the documents pertaining to the source and purchase of raw materials were also not found, where the provisions of Schedule 'M' were being violated. It also appears that hemoglobin 300 ml stock was found manufactured on 11.07.11 but labeling was done on 13.07.11, where the labels of



finished drugs indicated marketing to be done by one M/s Ronford Organics, New Delhi but no production order was produced to have been issued by such company. It is further stated that the name of manufactures over the labels of finished drugs was not visible from naked eye, where “Nimesulide Suspension” was found lying in the premises inspite of being a banned drug. It is further stated that such other drugs were found manufactured, for which license and approval was wanted. It is further stated that the samples of drugs were collected for analysis vide Form 17 (A) and the seal of Smt. Sweta Rani, Drug Inspector, Patna - 3 was used to sealed the samples. It is further stated that the said Drug Inspector before the finalization of the inspection report took away the seal portion of the samples and form 17(A) with her. It is further stated that despite of all efforts the details of form 17 (A) and the samples could not be mentioned in the inspection report and the FIR.

4. It is submitted by learned counsel that petitioner being the proprietor of firm, namely, M/s Grace Pharmaceuticals having its workshop at Phulwarisharif, Patna, where he used to manufacture drugs both biological and non-biological for human consumption under the authority of the license granted by State Drugs Controller and Chief Licensing Authority, Bihar, Patna, which was issued in favour of petitioner/firm under the provisions



of Drugs & Cosmetic Act, 1940, where License No. 21[N]/02 was issued for manufacturing of biological drugs and License No. 22[N]/02 was issued for manufacturing of non-biological drugs, which were duly renewed and revalidated till 27.09.2012.

5. It is further submitted that the implications of petitioner made only for the reason that during the course of inspection, he was not present in premises, therefore, he could not furnish the copy of license as discussed above to the inspecting authorities to get a wrong impression that License No. 21[N]/02 was not renewed. It is further submitted that absence of analytical chemist and manufacturing chemist on the date of inspection was a matter of chance. Moreover, on the date of inspection, no manufacturing activity like preparation of formula, application of chemicals were under progress. It is also pointed that inspecting team admitted the fact that the premises, in issue, was duly covered by lease agreement between the petitioner/firm and the owner of premises.

6. Learned counsel further submitted that provisions of Section 23 of Drugs & Cosmetics Act, 1940 have not been complied with because neither the samples were taken in the manner provided under the provisions nor the same were sealed in



presence of the petitioner. It was also not forwarded to the Government Analyst as mandate under law.

7. It is also submitted by the learned counsel that institution of FIR and investigation by Police in this case is without jurisdiction and is unsustainable in the eye of law in view of Drugs & Cosmetic Act, where only a criminal complain could be instituted by the Drug Inspector.

8. In support of the aforesaid legal submissions, learned counsel appearing on behalf of the petitioner relied upon the legal reports as reported through ***Union of India v. Ashok Kumar Sharma*** reported in ***2021 (12) SSC 674***, where learned counsel pressed paragraph no. 170.1 and 170.3 categorically, which runs as under:-

“170.1. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of 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.

170.3. Having regard to the scheme of 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 an FIR under Section 154CrPC, in regard to cognizable offences under



Chapter IV of the Act and he cannot investigate such offences under the provisions of CrPC.”

9. It will be further apposite to re-produce paragraph no. 102 of the case of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.*** reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers



under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



10. Learned Additional Public Prosecutor while appearing on behalf of the opposite party/State of Bihar opposes the present application.

11. In view of the aforesaid factual and legal submissions and by taking note of legal provisions as available under Drugs & Cosmetics Act, 1940 where only official complaint is maintainable on behalf of Drug Inspectors, and institution of FIR is prohibited and further by taking note of legal propositions, as laid down under the case of *Ashok Kumar Sharma (supra)*, the impugned order of cognizance with all its consequential proceeding against the petitioner in connection with Phulwarisharif P.S. Case No. 322 of 2011/Special – 3/13, as passed by learned Chief Judicial Magistrate, Patna is hereby quashed and set aside qua petitioner.

12. Accommodatingly, appeal stands allowed.

13. Let a copy of this judgment/order be sent down to trial court immediately.

(Chandra Shekhar Jha, J)

Shanu/-

AFR/NAFR	AFR
CAV DATE	N/A
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