

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35589 of 2016

Arising Out of PS. Case No.-14 Year-2015 Thana- GOVERNMENT OFFICIAL COMP. Dis-
trict- Siwan

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M/s Kwaliti Drug House, through Markand Sharma Son of Rama Autar
Sharma, resident of 29-30-31 Dawa Bazar, Ground Floor, 13-14, R.N.T.
Marg, P.S. M.Y. Road, Indore Madhya Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar through the Drugs Inspector, Jitendra Kumar Sinha, Ma-
harajganj, Siwan Drug Control Administration, Siwan Sadar Hospital Cam-
pus, P.S. Siwan, Town and District Siwan, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Yadav, Advocate.
	:	Mr. Sushant Kumar, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
Date : 05-08-2024

Heard learned counsel for the Petitioner and learned
counsel for the State.

2. The present petition under Section 482 Cr. PC has
been preferred by the Petitioner for setting aside the order dated
4.8.2015 passed by Ld. Chief Judicial Magistrate, Siwan, in
Complaint Case No.C-II 14 of 2015 whereby the Ld. Magistrate
has taken cognizance of offence punishable under Section 27(d)
read with Sections 16 and 18 of the Drugs and Cosmetics Act,
1940.

3. As per the Official Complaint bearing No. 14 of



2015 filed by Drugs Inspector, Maharajganj, Siwan, against six accused persons including the Petitioner, Proprietor M/s. Quality Drugs House, alleging that during inspection of P.H.C. Basantpur, Siwan on 12.03.2010, sample of Antisnake Venom Antiserums I.P (Lyophilized), B. No. A5307024, manufactured by Bharat Serums & Vaccine Ltd., was collected by Drugs Inspector, Siwan and was sent to CDL/CRI, Kasauli, in the prescribed Form for test and analysis. As per the test report, the sample of the drug seized during inspection was found to be “of not standard quality in respect to neutralization of Kobra venom”. The report was received from the Government analyst vide letter No. CDL/2010/3876 dated 23.6.2010. In pursuance of the report from the analyst, Bharat Serums and Vaccines Limited was informed and requested to explain the same vide letter No.497 dated 31.08.2010 of Drugs Inspector’s Office and same was communicated to higher Authorities for further action.

4. The Official Complaint by Drugs Inspector, Siwan, was lodged in the court of Ld. Chief Judicial Magistrate, on 1.8.2015 wherein the impugned order has been passed.

5. Heard learned counsel for the Petitioner and learned APP for the State.

6. Ld. counsel for the petitioner submits that the



impugned order passed by Ld. Chief Judicial Magistrate, Siwan, taking cognizance of the offence punishable under Section 27(d) of Drugs and Cosmetics Act is not sustainable. He submits that the maximum punishment as provided under Section 27(d) of the Drugs and Cosmetics Act, 1940 is two years. Hence, as per provisions of Sections 468(2)(C) Cr.PC, the limitation period will be three years. He also submits that as per Section 469(1)(b), the limitation period commences from the date of knowledge to the officials concerned regarding commission of the offence by the accused. In this context, he refers to and relies upon **State of Rajasthan Vs. Sanjay Kumar and Others (1998) 5 SCC 82**. He further submits that as per complaint, the knowledge regarding the offence has come to the officials subsequent to receipt of the test and analysis report from the CDL/CRI, Kasauli vide letter No. 497 dated 31.08.2010. The knowledge of the offence also transpires from the letter dated 13.10.2010 written by the Drugs Inspector, Siwan to Bharat Serums and Vaccines Limited seeking explanation regarding the report. As such, maximum period of three years expired on 31st of October, 2013, but the complaint has been filed on 01.08.2015 i.e. after expiry of about 2 years of the limitation. He also submits that the delay has also not been condoned. Hence, Ld. Magistrate was debarred for taking



cognizance and impugned order is not sustainable in the eye of law and liable to set aside.

7. However, Ld. APP for the State defends the impugned order submitting that there is no illegality or impropriety committed by the learned Magistrate in passing the impugned order.

8. I perused the material on record and considered the submissions advanced on behalf of the parties.

9. As per the facts and circumstances of the case, the alleged offence is punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 which is punishable with imprisonment for a term which shall not be less than one year but it may extend to two years and with fine and it shall not be less than twenty thousand rupees. Hence, in view of Section 468(2)(C) of the Cr.PC, 1973 the period of limitation is 3 years. Section 468(1) of the Cr.PC also provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of the offence of the category specified in sub-Section (2) after the expiry of the period of limitation. Section 468 Cr.P.C. reads as follows:

“468. Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-Section (2), after the



expiry of the period of limitation.

(2) The period of limitation shall be —

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

10. As per Section 469(1)(b) Cr.PC, 1973, the period of limitation would commence from the date of receipt of the test/analysis report of the seized drugs disclosing that the seized drug was not of standard quality. Section 469 of the Cr.PC 1973 read as follows:

“Section 469 deals with commencement of the period of limitation and it reads thus:

“469. *Commencement of the period of limitation.*—(1) The period of limitation, in relation to an offender, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier;
or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.”

(Emphasis supplied)



11. In similar facts and circumstances, Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Sanjay Kumar and Others (1998) 5 SCC 82** has clearly stated that in such situation, the limitation period commences from the date of knowledge of the commission of the offence to the officer concerned and not from the date of collection of sample by the Drugs Inspector.

12. From the averments in the complaint, it transpires that by 31.08.2010, Drugs Inspector, Siwan had come to know that the seized drug was not of standard quality. Hence, the official complaint must have been filed within three years since 31.08.2010 and this three years expired on 31.08.2013. But the official complaint has been lodged on 1.8.2015 i.e. after about two years of the expiry of the limitation period for filing complaint.

13. I further find that under Section 473 Cr.PC, the learned Magistrate could have condoned the delay if he could have been satisfied on the facts and circumstances of the case that the delay was properly explained or that it was necessary so to do in the interest of justice. In other words, the learned Magistrate was empowered to condone the delay in filing the complaint by a speaking order indicating his satisfaction that the delay was satisfactorily explained and the condonation of the same was in



the interest of justice. But from the perusal of the impugned order, it transpires that learned Magistrate has not invoked his power under Section 473 Cr.PC.

14. Hence, the impugned order is hit by Section 468 read with Section 469 Cr.PC, 1973 and hence, liable to be quashed and set aside under Section 482 Cr.PC to prevent the abuse of the process of Court and secure the ends of justice.

15. In a celebrated judgment of **State of Haryana Vs. Bhajan Lal 1992 Suppl (1) SCC 335**, Hon’ble Supreme Court has held amongst other things that where there is an express legal bar engrafted in any of the provisions of the code or the concerned act to the institution and continuation of the Proceedings, the inherent power as provided under Section 482 Cr.PC may be invoked.

16. Hence, allowing the present petition, the impugned order dated 04.08.2015 passed in Complaint Case No. C-II-14 of 2015, T.R. No. 13 of 2015/11 of 2016 by learned Chief Judicial Magistrate, Siwan, is hereby quashed and set aside.

S.Ali/chandan-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.08.2024
Transmission Date	07.08.2024

(Jitendra Kumar, J.)

