

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6689 of 2016

Arising Out of PS. Case No.-6 Year-2010 Thana- GAYA COMPLAINT CASE District- Gaya

Dr. Sarveshwar Kumar @ Dr. Sharbeshwar Kumar, son of resident of Barun Colony, Gola Road, P.S. - Rupaspur, District – Patna.

... .. Petitioner

Versus

1. The State of Bihar

2. Shambhu Nath Thakur, Inspector of Drugs, Gaya Commissioner Building, Gaya.

... .. Opposite Parties.

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar, Advocate

For the Opposite Party/s : Ms.Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-02-2024

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner has preferred this application for quashing the order taking cognizance dated 23.03.2010 passed by learned Sub-Divisional Judicial Magistrate, Gaya in connection with Complaint Case No. 6 of 2010 (Tr. No. 1389/11/838/15), whereby learned court has taken cognizance of the offence under Section 18-C read with Section 27(A) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the “Act of 1940”).

3. The brief facts of the case is that one Shambhu Nath Thakur, Inspector of Drugs, Gaya (opposite party no. 2) has



filed a complaint case in the court of learned Sub-Divisional Judicial Magistrate, Gaya alleging therein that as per letter/instruction bearing No. 160 dated 15.04.2009, issued by the Regional Deputy Director, Health Services, Magadh Commissioner, Gaya, an inspection was conducted in M/s Bhagwan Mahavir Blood Bank Private Ltd., by one Lalan Kumar, Drug Inspector, Sadar Division on 20.04.2009, where certain irregularities were found during said inspection. Thereafter, on the basis of such inspection, a complaint was lodged in the court of S.D.J.M., Gaya bearing G.O. Case No. 2/2010 under Section 18-C read with 27-A of the Act of 1940 against the petitioner including nine other persons. According to complaint case, during inspection which was conducted on 20.04.2009 in M/s Bhagwan Mahavir Blood Bank, Pilgrim Hospital Campus, S.B. Road, Gaya, certain irregularities regarding absence of Medical Officers, temperature of Blood Bank Refrigerator and some other similar defects in running of the Blood Bank were found. Petitioner is alleged to have been deputed as a doctor in the said Blood Bank.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner was posted in Gaya up to year 2000 as doctor, where during the said period, he was



deputed with blood bank namely, M/s Bhagwan Mahavir Blood Bank Pilgrim Hospital Campus, S.B. Road, Gaya along with other doctors. It is submitted that on 12.10.2000 petitioner after relieving from Pilgrim Hospital, Gaya joined as medical officer in MLA Hospital, Patna and since then he was continuously working at Patna and finally retired from Patna Medical College & Hospital, Patna (in short 'P.M.C.H.'). It is submitted that the alleged inspection as set out through complaint petition which was conducted on 09.04.2009 and by that time petitioner was not posted at Gaya. It is further pointed out that license of said blood bank was valid till 31st December, 1999 and therefore, there is no question of any further deputation over there, particularly in view of fact that petitioner handed over his charge as medical officer in Pilgrim Hospital, Gaya on 12.10.2000. It is submitted that this fact also admitted by opposite party no. 2 through its counter affidavit.

5. While concluding argument, learned counsel submitted that petitioner is a government servant, where no mandatory sanction was obtained under Section 197 of the Code of Criminal Procedure (in short the "Cr.P.C.") before taking cognizance, and on this score alone, the present proceeding is liable to be quashed and set-aside.



6. It would be apposite to reproduce paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]** which is being reproduced hereunder for a ready reference:

“**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 Act concerned (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 Act concerned, 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.”

7. Learned A.P.P. for the State has opposed the application and relied upon paragraph ‘6’ of the counter affidavit filed on behalf of opposite party no. 2. Learned A.P.P. submitted that inspection in issue was conducted in M/s Bhagwan Mahavir Blood Bank Pvt. Ltd. on 20.04.2009.

8. In view of the factual and legal submissions as discussed above, it appears that petitioner was not posted in Gaya as a doctor on the date of inspection i.e. 09.04.2009, therefore, any issue as to depute with M/s Bhagwan Mahavir Blood Bank Pilgrim Hospital Campus, S.B. Road, Gaya in capacity of government doctor appears absurd and inherently improbable to suggest any prudent person to reach to a conclusion regarding sufficient ground for proceeding against petitioner, hence, by taking note of the guidelines no. 1 and 5 as



available in the case of **Bhajan Lal** (supra), the impugned order of cognizance dated 23.03.2010 passed by learned Sub-Divisional Judicial Magistrate, Gaya in connection with Complaint Case No. 6 of 2010 (Tr. No. 1389/11/838/15) along with all it's consequential proceedings are hereby quashed and set-aside *qua* petitioner.

9. This application stands allowed.

10. Let a copy of this order be communicated to the learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.02.2024
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