

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19905 of 2015

Arising Out of PS. Case No.-2 Year-2014 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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1. M/s Om Surgical Industries through its Partner, Mr. Naresh Kumar Goel, S/o Sri Jai Narayan Goel, having It's registered office at 7.7 Km. Stone, at & P.O.- Titoli Jind Road, P.S.- Rohtas, District- Rohtak, Haryana
 2. Mr. Naresh Kumar Goel, S/o- Sri Jai Narayan Goel, Partner, M/s Om Surgical Industries having it's registered office at 7.7 Km. Stone, at & P.O.- Titoli Jind Road, P.S.- Rohtas, District- Rohtak, Haryana

... .. Petitioners

Versus

1. The State of Bihar
2. The Drug Inspector, Gaya

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. D.K. Sinha, Sr. Adv. Ms. Akanksha Malviya, Adv. Ms. Shuchi Bharti, Adv. Mr. Akash Keshav, Adv. Mr. Alexander Ashok, Adv.
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 17-12-2024

Heard Mr. D.K. Sinha, learned senior counsel appearing for the petitioners and Mr. Jharkhandi Upadhyay, learned APP appearing for the State.

The present application has been filed under section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for quashing the order dated 16.08.2014, so far as it relates to the petitioners, whereby and whereunder the cognizance under

sections and rules 96(ii), 18(a)(i) and 27(d) of the Drugs and Cosmetics Act, 1940 (in short 'Drugs Act 1940') & Rules 1945 Amendment, 2008 (in short 'Drugs Rules 1945') has been taken against the petitioners by the learned Sub-Divisional Judicial Magistrate, Gaya in connection with G.O. Case No. 2 of 2014.

2. Mr. D.K. Sinha, learned senior counsel appearing for the petitioners submitted that the petitioner No. 1 is a registered company and petitioner No. 2 is one of the partners of Ms. Om Surgical Industries. In December 2010, the State Health Society, Bihar, Patna invited tenders for supplying of drugs and medicines to the different medical institutions of the State of Bihar and the petitioners' company's tender was finally considered in respect to supply of ABSORBENT COTTON WOOL I.P. 500 gm., and in this regard, supply order was also issued to the petitioners' company and in this regard, an agreement was also executed between the petitioners' company and the Bihar State Health Society and thereafter, the petitioners' company started supplying the cotton as per the supply order to the different medical institutions. On 14.11.2013, Drug Inspector, Nagar Nigam Area, Gaya inspected the Central Drug store of Anugraha Narayan Magadh College and Hospital, Gaya and took sample of the Absorbent Cotton

Wool of batch No. 1194 and sent the same for testing at Bihar Drugs Control Laboratory, Agam Kuwan, Patna. After testing, the sample bearing batch No. 1194 was not found to be of standard quality and thereafter, petitioners' company was stopped from supplying the cotton of the said batch. In order to assail the order impugned, the learned counsel has mainly taken the grounds that firstly, the testing procedure was not correct and in the name of efficient test, the Deputy Government Analyst only did the formality and conducted only the Absorbency test and nothing else and in this regard, Annexure- '4' is relevant which also shows that prescribed protocol for conducting test on Absorbent Cotton Wool as per I.P. was not followed by the Government Analyst. In fact, the alleged cotton of the batch No. 1194 and 1258 became wet during transit from factory premises to warehouse and was meant for getting dispatched back to the factory and in this regard, an explanation was also submitted to the concerned authority vide Annexure - '7'. The learned trial court has passed the order impugned taking cognizance under sections 96(ii), 18(a)(i) and 27(d) of the Drugs Act 1940 and Drugs Rules 1945, in mechanical manner as there is no penal provision in Rule 96 of the Drugs Rules 1945. Drugs rule 18(a)(i) has been repealed and there is no penal provision in

the section 18(a)(i) of the Drugs Act 1940, though section 27(d) has penal provision but the same relates to drugs only and not relating to the cosmetic articles and the alleged cotton which was found to be of sub-standard quality comes in the purview of cosmetic articles, hence, the learned trial court has not applied its judicial mind in passing the order impugned, so, it is liable to be set aside.

3. On the contrary, Mr. Jharkhandi Upadhaya, learned counsel appearing for the State has vehemently opposed this petition and submitted that the alleged act of the petitioners attracts the penal provision under the Drugs Act 1940, though, there is no proper reference of the relevant penal provision in the order impugned but merely due to this fact, the order impugned should not be set aside and there is sufficient material to proceed against the petitioners for the alleged wrong under Drugs Act, 1940.

4. Heard both the sides and perused the order impugned and the relevant materials. As per the prosecution, Ms. Om Surgical Industries was bound to supply ABSORBENT COTTON WOOL as per the terms and conditions of the supply order and the allegation is that during the relevant period, the Absorbent Cotton Wool supplied by the said company to

Anugrah Narayan Magadh Medical College & Hospital, Gaya was found to be of below standard and the said conclusion was made after taking the Analyst report with regard to the samples taken from the supplied Absorbent Cotton Wool. In the instant matter, the court of learned Sub-Divisional Judicial Magistrate, Gaya has taken cognizance under sections and Rules 96(ii), 18(a)(i) and 27(d) of the Drugs Act, 1940 & Drugs Rules, 1945. The Rule 96 of the Drugs Rules, 1945 deals with the manner of labeling and has no panel provision in respect of the alleged act of the petitioners. The Rule 27(d) does not find a place as a Rule in the Drugs Rules, 1945 and the Rules from 9 to 20 have been omitted so, the reference of these Rules in the order impugned is completely irrelevant and not applicable. Now, I come to the Drugs Act 1940, in which there are penal provisions in respect of several offences relating to Drugs and Cosmetics. The Absorbent Cotton Wool which has been supplied by the petitioners to the concerned hospital comes in the purview of a cosmetic article in view of the definition of cosmetic given in Section 3 of the Drugs Act, 1940. The required standard of quality of a cosmetic article means that such cosmetic article complies with such standard as may be prescribed and in this regard, a specific notification must be there on the part of the

concerned authority. In the said Act although there is a penal provision in respect of misbranded cosmetics, spurious cosmetics and adulterated cosmetics, etc. but during the course of argument, learned APP has not brought the notification of the concerned authority regulating the standard of alleged cosmetics and making penal provision for supplying the low standard alleged cosmetic articles, though the supplied cotton which was found to be of low standard quality may come in the purview of an adulterated cosmetics but in this regard, there must be a specific report of an expert and a notification of concerned authority bringing such cosmetic article in the purview of an adulterated cosmetic. In the Drugs Act, 1940, there are penal provisions in Section 18(a)(i) and 27(d) but 18(a)(i) deals with the matter of a drug which is not of a standard quality and 27(d) deals with the penal provision in respect of a drug which is manufactured, sold, or distributed, or stocked or exhibited in contravention of the provisions of the Drugs Act and Drugs Rules made thereunder but the penal provision is irrelevant to the present matter. Although the section 18(a)(ii) prohibits the manufacturing and sale of a cosmetic which is not of a standard quality but regarding such prohibition, there must be a notification in the official Gazette on the part of the

Government, however, in the said section there is no penal provision. Section 27(A)(i)(ii) deals with the penal provision in respect of selling or manufacturing of a Cosmetic article which is found to be spurious or adulterated and section 27(A)(ii) deals with the penal provision in respect of the cosmetic article which is other than the cosmetic articles referred to in clause (i) of section 27(A) of the Drugs Act, though, the alleged act of the petitioners may come in this purview but in this regard, there must be notification on the part of government penalizing the supply of a cosmetic article which is found to be of low standard and the same has been violated by one but the section 27(d) of the Drugs Act, under which the cognizance has also been taken, has no application in this matter as the same deals with the penal provision in respect of Drugs only. Accordingly, this Court is of the view that the order impugned has been passed in mechanical manner without application of judicial mind and without taking into account the provisions of Drugs Act 1940 and Drug Rules 1945 made thereunder, so, the order is bad and not sustainable in the eye of law, hence, it is set aside and the learned Magistrate is directed to pass a fresh order in accordance with law after examining the relevant materials such as violation of the concerned notification, if any, by the petitioners and penal

provision under the Drugs Act 1940 for such violation after giving sufficient opportunity of hearing to both the parties. With above direction, the instant petition stands disposed of.

(Shailendra Singh, J)

annu/-

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