

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6366 of 2023

Arising Out of PS. Case No.-48 Year-2022 Thana- KATIHAR COMPLAINT CASE District-
Katihar

=====

SHOBHA ANAND PROPRIETOR OF SARTHAK MEDICAL HALL Wife
of Sri Pranaw Anand Resident of Jamuna Flour Mill Campus, Kalibari Road,
Binodpur, Katihar.

... .. Petitioner/s

Versus

The State of Bihar through Smt. Krishna Kumari, the Drug Inspector, Katihar
- 01.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Advocate
For the Opposite Party/s : Ms. Usha Kumari 1, APP

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

7 29-04-2024 1. Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has filed the instant application
praying for quashing the order dated 5.9.2022 passed by the
learned Additional Sessions Judge I-cum-Special Judge, Katihar
in Complaint Case bearing CII Case no.48 of 2022 whereby he
was pleased to take cognizance for the offence under section
27(b)(ii) read with section 18(c) of the Drugs and Cosmetics
Act, 1940 (hereinafter referred to as “the Act”).

3. Learned counsel for the petitioner submits that on



the basis of an inspection conducted with respect to the medical hall premises of the petitioner, a medical report dated 23.8.2022 was prepared and a complaint dated 31.8.2022 was lodged in the Court of learned Chief Judicial Magistrate, Katihar alleging commission of offence under section 27(b)(ii) read with section 18(c) of the Act.

4. On perusal of the complaint, it transpires that the allegations levelled therein is that in an inspection conducted on 23.8.2022, it was found that the license of the petitioner had been put under suspension by an order contained in letter no.168 dated 8.4.2021 for a period of 45 days for the reason that he had not uploaded the details of the pharmacists etc. on the website which was violation of section 18(c) of the Act. The petitioner was found absent and her husband was present. It was also found that sale was taking place inspite of there being no license for the said period.

5. Learned counsel appearing for the petitioner submits that the license of the petitioner was suspended vide order dated 8.4.2021 issued under the signature of the Assistant Drug Controller and from the uploaded status of the official website, it would transpire that the suspension of the petitioner's license was revoked on 23.5.2021. In reference to the inspection



report at page no.25, it is submitted that in the inspection conducted on 23.8.2022, it was taken note of the fact that the license of the petitioner was valid till 23.10.2026. It is thus submitted that the allegation that sale and purchase of drugs was taking place on the date of inspection ie 23.8.2022 is false for the reason that the documents available on the official website of the respondent and which has been brought on record, clearly show that the suspension of the petitioner's license stood revoked on 23.5.2021 itself. As such, it is submitted that no offence either under section 27(b)(ii) or section 18(c) of the Act is made out against the petitioner. The order taking cognizance, impugned herein, is not sustainable and the same be set aside.

6. The application is opposed by learned APP appearing for the State, however, even in the counter affidavit filed on behalf of the Drug Inspector, Katihar, there is no denial to the copies of the orders/relevant documents brought on record from the official website nor to the averments made and specially with respect to revocation of the suspension of the petitioner's license on 23.5.2021 and that the license of the petitioner is valid till 23.10.2026.

7. Having heard learned counsel for the parties and having perused the material on record, it would be relevant to



reproduce section 27(b)(ii) and section 18(c) of the Drugs and Cosmetics Act, 1940 for ready reference:

“27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.— whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,-

.....

(b) any drug-

.....

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees].”

.....

“18. Prohibition of manufacture and sale of certain drugs and cosmetics.— From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

.....

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for



sale,]or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.”

8. From perusal of the relevant part of the sections quoted herein above, it would transpire that section 27(b)(ii) deals with a person who is involved in the manufacture, sale or distribution of drugs without a valid license as required under section 18(c) of the Act. As stated herein above, it is not in dispute that the petitioner was a valid license holder. It is also not in dispute that the license of the petitioner which was put under suspension on 8.4.2021 stood revoked on 23.5.2021 and its validity is till 23.10.2026. On the date of inspection carried out in the premises of the medical hall of the petitioner in August, 2022, the petitioner had a valid license.



9. In the facts and circumstances of the case, in the opinion of the Court, the learned Court below committed illegality in taking cognizance for the offence under section 27(b)(ii) read with section 18(c) of the Drugs and Cosmetics Act, 1940.

10. The order impugned dated 5.9.2022 passed in Complaint Case bearing CII Case no.48 of 2022 taking cognizance under section section 27(b)(ii) read with section 18(c) of the Drugs and Cosmetics Act, 1940 is not sustainable and the same is set aside.

11. The application is allowed.

(Partha Sarthy, J)

Saurabh/-

U		T	
---	--	---	--

