

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.88 of 2023

Arising Out of PS. Case No.-220 Year-2020 Thana- KATIHAR NAGAR District- Katihar

Dr. Md. Sarfaraz S/O Late Md. Zama At Binodpur Katihar In Front Of
Kalayani Nursing Home R/O Flat No 101 Gulshan Plaza, Mohalla- Alinagar
Colony Anisabad, P.S.- Gardanibagh, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Additional Chief Secretary, Health Department, New Secretariat, Patna Bihar
2. Dr. A.P. Sahi, the Then Civil Surgeon-Cum- Chirf Medical Officer, Katihar At Present Girja Chawk, Near Indira Gandhi Stadium, Purnea
3. Dr. B.K. Chaudhary Additional Chief Medical Officer, Katihar (Chairman) At Present Posted As Civil Surgeon, Betiyah (EAST Champaran)
4. Dr. B. Gopalka, the Then Medical Officer At Sadar Hospital Katihar Practicing At Amala Tola, Katihar
5. Dr. Jay Prakash, the District Vector-1 Disease Controlling Officer, Katihar
6. Ajay Kumar Rashik, the Then Drug Inspector, Katihar-1 Presently Posted As Drug Inspector, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate Mr. Kumar Ragdeep, Advocate Ms. Diksha Kumari, Advocate
For the Informant	:	Mr. Ajay Bihari Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 06-05-2024 Heard learned senior counsels for the parties.

2. The petitioner has moved the Court for the following reliefs:

“i. To quash the order dt. 21.09.2022, whereby and where under the learned Additional Session Judge-I cum-Special Judge Drugs & Cosmetics Act, Katihar, took the cognizance against the petitioner for the offences u/s 120 (B), 274, 275, 276, 419, 420, 467, 468, r/w 34 IPC & 27(b)(ii), (d), 28, 28(A), 27(a), 27(c) of Drugs & Cosmetics Act on the basis of the



materials available on records whenever the police after investigation the case submitted the charge-sheet found false case against the Petitioner. under the Special Acts & Drugs & Cosmetic Act 1940, without following the mandatory provision of Drugs and Cosmetics Acts where the search, seizure and investigation conducted by the police/team is otherwise bad in law hit by Special enactment 32 of the Act in question, so that the order taking cognizance by the Court is otherwise bad in law without jurisdiction because the petitioner is registered medical practitioner specialist in ENT, so that for the concerned of his specialized drugs were kept under the provision of the act where no medicinal shop running in his clinic where only 29 types of medicines (like pain, antibiotic, gas medicine, allergy, ear drops, nasal drops and vitamins) which were not kept for sale purpose. There was no stock, no exhibit or offer for sale or distribution thereof in the clinic of the doctor and as such seized medicines purchased by the petitioner from duly licensed premises, through valid bill. It is stated that the drugs mentioned in from-16 only & only the drugs found of his subject in whom the petitioner is specialized, which shows that the concerned medicines not kept for the sale, but for the patients use.

ii. To direct the respondents to pay Rs. One crore (1) for loss and damage of his career whatsoever where the social prestige of a doctor has been demolished and spoiled his future career by the illegal action taken illegally against the petitioner, whenever the petitioner is a registered medical practitioner as per the Medical Council Act authorized him to purchase any medicine for the clinical purpose upon his Registration/License No. 34754. It is submitted that Committee Constituted illegally with ulterior motive & wreaking vengeance without affording any opportunity or asking any explanation to the petitioner and in violation of principle of natural justice illegally registered FIR just to spoil his entire career and reputation



in the society of the area where no complain or any claim to this effect has been filed either by the patients or by any affected persons in the present case. It is stated that the medicine which have been seized are labeled with name and address registered medical practitioner by whom it is supplied. It is submitted that a medical doctor if he acquires the drugs from a duly licensed premise for the clinical purpose can keep the same in the clinic not required drugs License, in that situation not liable for contravention of Drugs and Cosmetic Act and Rules. There is no chit of paper to suggest or prove the selling of drugs either by the staff or by the Petitioner. It is stated that no opportunity was given to the petitioner disclosing the source from where small quantity of drugs acquired. In that situation action under challenge is improper/unjust/without jurisdiction.

iii. It is further to take action under the same acts against the Respondents who are with common intention with malfide consequences under conspiracy targeted the medical practitioner under practice rivalry concocted false & fabricated case against the petitioner.”

3. As per the FIR, a raid was conducted in the clinic of Dr. Md. Sarfaraz (petitioner) at about 1 PM. At that time petitioner was absent and medicines were found to be sold illegally without license. It is stated that during the course of raid, certain medicines were seized and inspection report was prepared. After investigation, the police submitted final form exonerating the petitioner but the learned Special Judge has differed with the final form and taken cognizance against the petitioner.



4. It is further alleged that during course of inquiry, Mantu Kumar, who was running the clinic and selling the medicine has stated that the petitioner lives in Patna and medicines are being prescribed through video conferencing and after that the medicines were made available to the patient from the said clinic. The informant further stated that in violation of Indian Medical Council Act, 1956, the clinic was running. It is further alleged that compounder Shree Mantu Kumar stated the team that the premise having medicine belonging to Dr. Md. Sarfaraz and further disclosed that the medicine was supplied by medical representative or from Patna. The informant further stated that no valid license was found in the clinic about selling-purchasing of the Drugs and further did not disclose the source from where such drugs were acquired. The informant further stated that in violation of Indian Medical Council Act, 1956, the provision for running of clinic without having drug license and exhibit the drugs on rack and not disclosing source from where drugs are purchased and further not maintaining the papers/documents is illegal and in contravention of 18(c), 18(a) (vi), 18A, 18-B, 18(a)(i) read with 17B(a) and 17-B(c). So that informant requested the police to lodge the FIR against the petitioner and his compounder in violation of Indian Medical



Council Act, as well as prevention of Drugs Cosmetic (Amendment) 2008 and accordingly, the F.I.R. was lodged.

5. Learned senior counsel for the petitioner has submitted that the petitioner is a qualified doctor and has done his post graduation in E.N.T. He has further submitted that the raid was conducted during Corona period and when the petitioner was not found in his clinic, the F.I.R. was filed that the petitioner was treating patients through video conferencing and some medicines were discovered from his clinic. Learned senior counsel has further submitted that the impugned order is fit to be set aside as no offence is made out from the allegations levelled by the authorities in the F.I.R. and considering the same, final form was submitted.

6. Learned counsel for the State has opposed the application and has submitted that cognizance has rightly been taken.

7. From the reading of the F.I.R., it appears that the petitioner was not found in the clinic and it is said that he was advising his patient on video conferencing through phone. During corona period, this practice has developed that a doctors were advising their patient through video conferencing/ through WhatsApp calls and the police has rightly found that no offence



has been committed by the petitioner who is a well qualified doctor.

8. So far as the second allegation of finding some medicine is concerned, there is no evidence on record to show that the medicines were for the purposes of sale by the doctor. If some medicines have been found in the clinic of the doctor that is not an offence. Moreover, the impugned order by which cognizance has been taken, it appears that the order has been passed by the learned Special Judge for taking cognizance without any application of mind and without going through the materials available on record and discussing the materials available on record.

9. In these circumstances, this application is allowed. The order dated 21.09.2022 and the FIR vide Katihar Nagar P.S. Case No. 220 of 2020 with respect to the petitioner is quashed.

(Sandeep Kumar, J)

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