

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1256 of 2024

Arising Out of PS. Case No.-373 Year-2016 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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TTK Healthcare Limited Son of Shri S Narasimhan Having its registered office at No. 6, Cathedral Road, P.S. - Teynampet, Chennai 600 086, Tamil Nadu, through authorised representative Mr. N Kannan, S/o Shri S Narasimhan, aged about 61 years, R/o C-36, East End Apartment, Mayur Vihar Phase 1 EXNT, Near New Ashok Nagar Metro Station, Mayur Vihar Phase 1 EXTN, Mayur Vihar Phase 1, P.S. - Mayur Vihar, East Delhi 110091

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sheela Singh W/o Vidhan Chandra Singh R/o VIP road, Benta, P.S. - Laheria Sarai, Distt. - Darbhanga, Bihar, proprietor of M/S RS Enterprises, having its office at Benta Road, Laheria Sarai, Distt. - Darbhanga, Bihar 846004

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Dayanand Singh Mr. Dhananjay Kashyap Mr. Tarang Agrawal
For the Opposite Party/s	:	Mr. Nirmal Kumar Sinha Mr. Jharkhandi Upadhyay
For the O.P. No. 2	:	Mr. Sameer Ranjan

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 01-08-2024 The office is directed to make necessary correction in the cause title of the petition as TTK Healthcare Limited is being represented by the authorized signatory and therefore, son of Shri S Narasimhan should be deleted from the cause title.

Heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing on behalf of the State.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor appearing on behalf of the State.



2. The present application has been filed for quashing/setting aside the Impugned Order dated 24.05.2018 passed by learned Additional Chief Judicial Magistrate IV, Darbhanga in CR No. 373 /2016 (R No. 382/2016) along with the entire criminal proceedings whereby and whereunder, the Court below has taken cognizance of the offences punishable under Section 406 and 420 of Indian Penal Code, 1860, against the Petitioner and some unknown officials / designations of the Petitioner and further issued summons against them.

3. It is further submitted that the CR No. 373/2016 (R No. 382/2016) has been filed by one, Sheela Singh, i.e. the Opposite Party No. 2 has alleged that the proprietor of one RS Enterprises, has made the following allegations:

I. The Complainant has alleged that she is engaged in the business of selling the medicines manufactured by the Accused Company, the Petitioner herein, from years and vide Order dated 17.07.2015 of the Accused Company, the Complainant was supplied with a medicine namely 'Ossopan HD' ("Product") worth Rs. 12,178 in addition to other medicines.

II. On 14.08.2015, in a routine inspection by the Drug Inspector, Municipal Area 03, Darbhanga, the Drug Inspector directed the Complainant to not sell the aforesaid



'Ossopan HD' and further asked the Complainant to submit all the requisite documents pertaining to the approval of the said Product.

III. The Complainant issued letters dated 15.06.2015 and 02.09.2015 to the Petitioner Company and super stockiest, M/s BS Enterprises asking for a copy of documents pertaining to approval of aforesaid 'Ossopan HD' and thereafter, the Complainant issued legal notices dated 30.10.2015 and 19.12.2015, however, no response was received by the Complainant.

IV. The Complainant has alleged that the act of the Petitioner Company of supplying the Complainant with the Product without requisite approval has caused financial and reputational loss to the Complainant.

4. It is further submitted that on the basis of aforesaid allegations, the Complainant registered the criminal complaint vide CR No. 373/2016 (R No. 382/2016), wherein, the Complainant made the three named accused, Mahaprabandhak, TTK Healthcare Ltd.; Up- mahaprabandhak, TTK Healthcare Ltd. and TTK Healthcare Ltd., the Petitioner herein.

5. Learned Senior Counsel further submitted that the Complainant recorded two enquiry witness in support of her



complaint and the Court below, without application of mind, took cognizance of the offences punishable under Sections 406 and 420 of Indian Penal Code, 1860 against all the accused persons and further directed for issuance of summons.

6. He submits that it is pertinent to mention that though the Court passed the Order impugned on 24.05.2018, the summons have been issued after five years and thus the Petitioner Company got knowledge about the instant case and thereafter the Petitioner approached this Court. Therefore, there is no delay or laches on the part of the Petitioner Company.

7. It is also submitted that the Opposite Party No. 2 / Complainant has arrayed three accused persons namely, Mahaprabandhak, TTK Healthcare Ltd.; Up- mahaprabandhak, TTK Healthcare Ltd. and TTK Healthcare Ltd., the Petitioner herein, whereas, **there are no designations in the name of Mahaprabandhak, TTK Healthcare Ltd. and Up-mahaprabandhak, TTK Healthcare Ltd.**

8. Learned Senior Counsel for the petitioner further submits that it is pertinent to mention that the *malafide* intent and oblique motive of the Opposite Party No. 2/Complainant is manifested from the fact that the Complainant has made an



attempt to make superior officials/designations as named accused in the complaint without there being any whisper of any allegation against them, with the sole motive to cause undue pressure and harassment to the Petitioner Company.

9. He further submits that the Petitioner i.e., TTK Healthcare Limited, is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at No.6, Cathedral Road, Chennai 600 086. The Petitioner Company is primarily engaged in the business of manufacturing and marketing of Formulations / Supplements for Veterinary use, Consumer Products, Medical Devices viz., Heart Valves and Orthopaedic Implants, Foods and Male Contraceptives.

10. It is also submitted that over the last six decades, the Petitioner Company has significantly contributed to the advancement of the healthcare system in India through development and commercialisation of innovative products for diversely important segments of the healthcare industry. The present petition has been filed for, and on behalf of, the Petitioner Company through Mr N Kannan, who has been duly authorized to do so vide Board Resolution dated 26th May, 2004 passed by the Petitioner Company.

11. Learned Senior Counsel for the petitioner



further submits that the impugned Order dated 24.05.2018 is mechanical and the Court below has passed the Impugned Order without applying judicial mind and it is not based on the materials available on record.

12. He submits that it is settled position of law that the Magistrate cannot trust the prosecution story blindly and the cognizance order must reflect the application of mind and appreciation of materials on record. Apart from the plain reading of the entire complaint petition, S.A. and enquiry witness, it is abundantly clear that:

I. The Complainant has deliberately presented the false facts before the Court below whereby the Complainant has falsely impressed upon the Court below that the Petitioner Company is the manufacturer of the Product in question, i.e., 'Ossopan HD', whereas, it is fully known to the Complainant that the **aforesaid Product is manufactured by Pure and Cure Healthcare Private Limited ("the Manufacturer"), a wholly owned subsidiary of Akums Drugs and Pharmaceuticals Limited. Pertinently, the Petitioner Company is only engaged in marketing of the aforesaid Product.**

II. The Complainant has deliberately concealed the material facts from the Court whereby the Complainant has



concealed the factum that super stockiest, i.e., M/s BS Enterprises duly collected the entire stock of 'Ossopan HD' from the Complainant and also issued credit notes to the Complainant.

It is worthwhile to mention that the aforesaid drug was manufactured by the Manufacturer Company under a valid manufacturing license dated 30.11.2013 bearing no. 51/UA/SC/P-2013, alongwith its addendum dated 02.09.2014, issued by the Drug Controlling and Licensing Authority, Uttarakhand, however, to remove the difficulty of the Complainant, the super stockiest collected the entire stock and issued credit notes, thus no dispute whatsoever remains.

III. Therefore, the Complainant has played fraud from the Court below by concealing the aforesaid material facts and therefore, the Impugned Order dated 24.05.2018 is *non est* in the eyes of law as held in the judgment of Hon'ble Supreme Court in the case of *A.V. Papayya Sastry and Ors. vs. Government of A.P. and Ors., AIR 2007 SC 1546*, held that "Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as *non est* by every Court, superior or inferior."

IV. From the perusal of entire complaint, it is clear that the instant complaint has been filed on basis of a routine



inspection whereas the *bona fides* of the Petitioner Company are evident from the fact that no proceedings have been initiated against it by any statutory authority in relation to the Product. There was no occasion for the Complainant to *ipso facto* infer that the Product was not approved by the relevant authorities. Had that been the case, the Petitioner Company, the Manufacturer and other distributors would have been facing proceedings under the relevant statute(s), which is clearly not the case.

V. Neither the Complainant, nor the Petitioner Company or Manufacturer or any of the distributors are subjected to any prosecution under the provisions of the Drugs and Cosmetics Act, 1940.

VI. From the perusal of complaint petition, it is abundantly clear that the grievance raised by the Complainant in essence is the business, reputational and financial loss and as such it is a civil dispute and no criminal offence is made out whatsoever in view of the allegations levelled by the Complainant. The relevant excerpt of the complaint petition is reproduced hereunder for brevity of the Court:

"मुदालहूम के कृत्य - वश मुदई की प्रतिष्ठान की वर्षों की अर्जित मान मर्यादा प्रतिष्ठा जान सामान्य व दवा कारोबारियों के बीच हनन हुआ है तथा मुदई के प्रतिष्ठान का व्यावसायिक सामाजिक व आर्थिक नुकसान हुआ है।"



VII. There is absolutely no whisper of allegations against any of the officials of the Petitioner Company and therefore the Impugned Order has been passed against the well settled principle of law that the officers of a company cannot be prosecuted in criminal proceedings in absence of specific allegations against them in the Complaint as held by the Hon'ble Supreme Court in the case of ***Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and ors., AIR 2021 SC 4587.***

VIII. There is not even a whisper of allegations against any of the official of the Petitioner Company in their personal capacity and as such, in the absence of such allegations the Impugned Order of cognizance is bad in the eyes of law.

13. Learned Senior Counsel for the petitioner further submits that the petitioner seeks to bring correct factual matrix before this Court for proper appreciation of the factual aspects:

I. On 12.07.2010, an entity namely, M/s BS Enterprises ("Super-Stockist") was appointed by the Petitioner Company as its super-stockist to service requirements of all the distributors in the State of Bihar, which included Opposite Party No. 2/Complainant as well. In terms of the letter dated 12.07.2010 issued by the Petitioner Company, which was



accepted by the Super-Stockist on 20.07.2010, the Super-Stockist was to sell products marketed by the Petitioner Company to various interested stockists and dealers in the State of Bihar, at its own account, on a '*Principal-to-Principal*' basis. Relevant terms agreed between the Petitioner Company and Super-Stockist are reproduced hereinunder for the convenience of this Court:

"3. You shall sell the products to Stockists and Dealers in the State of Bihar on your own account and at the prices fixed by the Company.

5. This arrangement is on a Principal-to-Principal basis and shall function as independent entities. Nothing stated in this letter shall authorize or permit the Super Distributor to plead that they are the agent of the Company and neither shall hold out to third parties that they are the agent of the Company. The Super Distributor shall not at any time enter into or incur on behalf of the Company any commitment, expense or liability whatsoever in connection with this arrangement."

II. It is relevant to mention that subsequent to the appointment of the Super-stockist, the Petitioner Company did not deal with any other distributor or stockist in the State of Bihar. All the dealings were done directly by the Super-Stockist with the distributors/stockists, thus, the Petitioner Company had no transactions/ involvement with the Opposite Party No. 2 / Complainant, in any manner whatsoever. Thus,



there is no privity of contract between Opposite Party No. /Complainant and Petitioner Company. 2

III. One of the products marketed by the Petitioner Company was 'Ossopan HD' - a calcium supplement manufactured by Pure and Cure Healthcare Private Limited ("**the Manufacturer**"), a wholly owned subsidiary of Akums Drugs and Pharmaceuticals Limited under a valid manufacturing license dated 30.11.2013 bearing no. 51/UA/SC/P-2013, alongwith its addendum dated 02.09.2014, issued by the Drug Controlling and Licensing Authority, Uttarakhand under Rule 76 of the Drugs and Cosmetics Rules, 1945. The formulation of Ossopan HD was as follows:

Calcium Carbonate IP eq. to Elemental Calcium	500 mg
Vitamin D3 IP (as Stabilized form)	1000 IU
Magnesium Hydroxide IP eq. to Elemental Magnesium	100 mg
Vitamin K2 Menaquinone 7	50 mcg
Manganese Sulfate USP eq. to Elemental Manganese	1.8 mg
Sodium Borate BP eq. to Elemental Boron	3 mg
Colour: Titanium Dioxide	

IV. On 20.07.2015, the Drug Inspector appointed under the Drugs and Cosmetics Act, 1940 ("**Drugs and**



Cosmetics Act") inspected the premises of the Petitioner Company (based out of Patna), raised certain concerns regarding presence of Vitamin K2 Menaquinone 7 (**"Vitamin K2- 7"**) in the Product and in view thereof, *inter alia* directed the Manufacturer and the Petitioner Company to provide the following:

i. Product approval for manufacturing of OSSOPAN HD tablet formulation.

ii. Form-44 of OSSOPAN HD tablet formulation which has been applied to the Office of DCG (I).

iii. Form-46 of OSSOPAN HD tablet formulation which has been issued from the Office of DCG (I).

iv. Evidentiary justified proof regarding fixing of the wholesale rate and MRP of OSSOPAN HD tablet formulation.

V. On the basis of the Inspection Report dated 20.07.2015, the State Drug Control Department, Bihar, issued two identical letters dated 10.09.2015 and 15.09.2015 *inter-alia* seeking the same clarifications which were sought in the Inspection Report.

VI. Immediately upon receipt of letter dated 10.09.2015, on 16.09.2015, the Petitioner Company, vide its response, *inter alia* clarified as under:

a. The Petitioner Company was only marketing the Product - Ossopan HD and not manufacturing it.



b. The Product was being manufactured under a valid license issued by the State Drug Licensing Authority. A copy of the License was also shared by the Petitioner Company with the response.

c. Drugs Controller General of India ("DCGI") had already approved some formulations containing Vitamin K2-7. Therefore, it was not the case that presence of Vitamin K2-7 in every drug/medicine was not approved.

d. Vitamin K2-7 was found to be effective as well as safe in various studies, copies of which were also shared by the Petitioner Company with the response.

VII. However, in spite of the therapeutic rationale and approvals given to the said Product, in view of the advice given by the State Drug Controller at that contemporaneous time, as a matter of abundant caution, the Petitioner Company also clarified that it had already discontinued the sale of the Product in the State of Bihar.

VIII. The Complainant has alleged that on 14.08.2015, Drug Inspector, Municipal Area -3, Darbhanga ("Drug Inspector") allegedly visited the premises of the Opposite Party No. 2/ Complainant (M/s RS Enterprises). During the search, the Drug Inspector allegedly inspected 3 to 4 formulations dealt with by the Opposite Party No. 2/Complainant, including 'Ossopan HD' which had Vitamin



K2-7.

IX. It is pertinent to mention that products were only inspected in routine manner and not seized by the Drug Inspector.

X. On 12.11.2015, the State Drug Control Department, Bihar once again called upon the Petitioner Company to provide the clarifications which were sought vide letter dated 10.09.2015. The same was once again duly responded to by the Petitioner vide letter dated 14.12.2015 *inter alia* stating that it was not the manufacturer of the Product and clarification in relation to formulation or otherwise ought to be sought from the Manufacturer and not Petitioner Company.

XI. The Complainant issued a legal notice dated 30.10.2015 to the Super-Stockist *inter-alia* alleging that inspection of the Product Ossopan HD had allegedly caused loss of reputation.

A bare perusal of the legal notice makes it manifest that no allegations were levelled against Petitioner Company, in any manner whatsoever. Be that as it may, immediately upon receipt of the legal notice from the Super-Stockist, the Petitioner Company advised its Super- Stockist to take back the stocks, if any, and issue credit notes as was being done with the other retailers and distributors.



XII. Another legal notice dated 19.12.2015

was issued on behalf of the Opposite Party No. 2 / Complainant which was duly responded by M/s BS Enterprises (Super- Stockist) on 26.12.2015 calling upon the Complainant to return the stock and it agreed to issue a credit note.

14. It is further submitted that vide letter bearing no. 4-01/2015-DC (Misc. 63) dated 01.01.2016, the DGHS clarified that *"based on the recommendations of the expert committee, Vitamin K2-7 bulk drug (API) can be considered as deemed to be approved for the purpose and the aforesaid letter dated: 04.06.2015 issued by this office may be dealt accordingly"*. Therefore, there was a satisfactory closure to the concerns raised by the relevant authorities.

15. It is further submitted on behalf of the petitioner that no proceedings (civil or criminal) were ever initiated by the State Drug Control Department, Bihar, against the Petitioner Company in connection to the drug in question and also the Opposite Party No. 2 / Complainant returned the products to M/s B S Enterprises and received credit notes for the same.

16. He submits that the *malafides* of the Opposite Party No. 2 / Complainant are evident from the fact that while it



had returned some stocks of the Product to M/s BS Enterprises (Super-Stockist) and had taken credit notes for the same, still it filed the Complaint against the Petitioner Company and unnamed officials to somehow pressurize and arm-twist them.

17. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court:-

- I. M/s Pepsi Foods Ltd. & Ors. v. Special Judicial Magistrate & Ors., reported in (1998) 5 SCC 749
- II. Bhushan Kumar and Another v. State (NCT of Delhi) and Anr. reported in (2012) 5 SCC 424, the
- III. GHCL Employees Stock Option Trust v. India Infoline Limited, reported at (2013) 4 SCC 505
- IV. Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and Ors., reported in AIR 2021 SC 4587,
- V. Maksud Saiyed v. State of Gujarat & Ors., reported in (2008) 5 SCC 668
- VI. M/s Thermax Limited and Others v. K.M. Johny and others, reported in (2011) 11 SCC 412
- VII. Sunil Bharti Mittal v. CBI, reported at (2015) 4 SCC 609



VIII. N. Raghavender v. State of Andhra Pradesh,

CBI, reported at 2021 SCC OnLine SC 1232,

IX. Usha Chakraborty and Anr., vs State of West
Bengal and Anr., 2023 SCC Online SC 90

X. Vishnu Kumar Shukla and Another vs State
of Uttar Pradesh and Another, 2023 SCC
OnLine SC 1582

XI. Mahmood Ali and Ors. vs. State of U.P. and
Ors., AIR 2023 SC 3709

XII. State of Haryana and Ors. vs. Ch. Bhajan Lal
and Ors. AIR 1992 SC 604

XIII. Neeharika Infrastructure Pvt. Ltd. vs. State
of Maharashtra and Ors., AIR 2021 SC 1918.

18. The learned Additional Public Prosecutor
appearing for the State and the learned counsel appearing on
behalf of the opposite party No. 2 have opposed the application
of the petitioner.

19. The learned counsel for the opposite party
No. 2 has supported the complaint and has submitted that the
present complaint cannot be quashed at this stage and the
petitioner may be directed to raise all the grounds at the stage of
framing of charge.



20. I have considered the submissions of the parties.

21. From the statement of the petitioner, it appears that the petitioner-company is primarily engaged in a business of manufacturing and marketing of Formulations/Supplements for Veterinary use, Consumer Products, Medical Devices, Heart Valves and Orthopedic Implants, Foods and Male Contraceptives. It had appointed a super stockists M/s BS Enterprises who had an agreement with the complainant and the petitioner-company had no agreement with the complainant.

22. After the inspection by the Drugs Authorities, notice was issued to the petitioner-company with regard to the approval of “Ossopan HD” and the complainant-company responded to the same and has given the details of the manufacturer of the medicine and has stated that the same is manufactured by ‘Pure and Cure Healthcare Private Limited’, a wholly owned subsidiary of Akums Drugs and Pharmaceuticals Limited. Therefore, the petitioner-company had no dealing with the complainant. It has also come that after the doubts were raised about the medicines i.e. “Ossopan HD”, M/s BS Enterprises has taken back the entire stock and issued credit note to the complainant. The complainant in the complaint has



not disclosed the aforesaid fact that the entire stock of the medicine i.e., “Ossopan HD” was taken back by B.S. Enterprise and credit note was issued.

23. Moreover, from the reading of the entire complaint, it appears to be a business dispute and no offence whatsoever is made out. No proceeding was initiated against the manufacturer or the marketing company i.e. the petitioner by the Drugs Authorities and they were satisfied with the reply submitted by the petitioner-company. All these issues have been suppressed by the complainant while filing the complaint.

24. There is no specific allegation against any other officer i.e. the Maha Prabandhak and the Up-Maha Prabandhak though it has been contended by the petitioner that there is no such post existing in the Company.

25. I find that the complaint has been filed *malafidely* by suppressing the fact of return of the stock to M/s BS Enterprises and no offence is made out from the reading of the entire complaint. There is no specific allegation against the accused persons i.e. the Maha Prabandhak and the Up-Maha Prabandhak which post do not exist as contended by the petitioner and considering the aforesaid, I am of the view that the present complaint cannot continue in the interest of justice



and in these circumstances, this application is allowed.

26. The order dated 24.05.2018 passed by the Additional Chief Judicial Magistrate IV, Darbhanga in CR No. 373 /2016 (R No. 382/2016) along with the entire criminal proceedings under Section 406 and 420 of Indian Penal Code and the entire complaint are hereby quashed.

(Sandeep Kumar, J)

Saif/-P.Kumar

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