2024:PHHC:095096

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(251)

1. **CRM-M No.10781 of 2024**
Reserved on: July 19th, 2024
Date of decision: July 29th, 2024

Susheel Kumar
.....Petitioner

Versus

State of U.T. Chandigarh
.....Respondent

(255)

2. **CRM-M No.31906 of 2024**

Abhishek P.V.
.....Petitioner

Versus

Union Territory of Chandigarh
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Gurnoor S. Sandhu, Advocate
for the petitioner (in CRM-M-10781-2024).

Mr. Nitin Jain, Advocate
for the petitioner (in CRM-M-31906-2024).

Mr. Manish Bansal, Public Prosecutor, U.T. Chandigarh
with Mr. Amit K. Goyal, A.P.P., U.T. Chandigarh.

<u>MANJARI NEHRU KAUL, J.</u>

This order shall dispose of the above-mentioned petitions as they arise out of same FIR.

2. Petitioners have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of FIR No.56 dated 18.04.2021 under Sections 420, 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'), Section 7 of The Essential Commodities Act, 1955 (hereinafter referred to as 'the E.C. Act') and Section 27 of

The Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the 1940 Act'), at Police Station Central Sector 17, Chandigarh and the consequential proceedings arising therefrom.

3. **SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE PETITIONERS-ACCUSED:-**

(i) That as per allegations levelled in the FIR, a box containing a sealed vial of white powder was recovered from petitioner -Abhishek P.V. The allegations specifically concern the sale of Remdesivir, a drug which was being prescribed during the Covid-19 pandemic. However, the police did not possess the powers to conduct the raid or seize any items. According to Section 32 of the 1940 Act, the authority to conduct such operations is exclusively vested in Drug Inspectors. By conducting the raid and seizure, the police clearly exceeded their jurisdiction, rendering their action on the face of it illegal. This overreach by the police not only violates statutory provisions but also sets a dangerous precedent of law enforcement agencies exceeding their legally defined powers, thereby compromising the integrity of the judicial process.

(ii) That the only allegation against petitioner-Susheel Kumar involves the recovery of a letter dated 13.04.2021 (Annexure P-10), from Health Biotech Limited (hereinafter referred to as 'Company'), which requested permission from the Government of Himachal Pradesh to market Remdesivir domestically. This letter does not constitute any criminal activity much less would it implicate petitioner- Susheel Kumar in any illegal conduct. It simply represents a lawful request for regulatory permission, a legitimate and permissible activity under the law, and thus, cannot serve as the basis for criminal prosecution.

The inclusion of this letter in the allegations against petitioner-Susheel Kumar is a clear attempt to misconstrue lawful activities as criminal, thereby unjustly implicating him in the present case.

(iii) That to invite the mischief of an offence under Section 420 of the IPC, there must be clear evidence of inducement and a dishonest intention to deceive, leading to the delivery of property. In the present case, there is no evidence to suggest that the petitioners made any such inducement. Furthermore, it is not even the case of the prosecution that any property was delivered as a result of the alleged deception. Consequently, the essential elements required to constitute an offence under Section 420 of the IPC are entirely absent, rendering the allegations of cheating against the petitioners unsustainable. The lack of any inducement or delivery of property highlights the baseless nature of the allegations and underscores the need to quash the FIR in question.

(iv) That the police were not empowered to seize any drugs under the E.C. Act. The 1940 Act being a special law, takes precedence and grants powers of seizure exclusively to Drug Inspectors. In support, reliance has been placed upon ***Atul Garg Versus State of Punjab 2012 (3) R.C.R. (Crl.) 936***, wherein it was underscored that the specific provisions of the 1940 Act override the general provisions of the E.C. Act. Thus the actions of the police in they instant case were unauthorized and illegal, lacking the requisite legal foundation. The unauthorized actions of the police thus, violate the statutory mandate

(v) That the FIR in question has already been quashed against the Director of the Company, which clearly indicates towards absence of any cogent much less convincing evidence and legal basis for the allegations. The quashing qua the Director of the Company further undermines the credibility and validity of the allegations against the petitioners, suggesting that the entire case, which has been planted upon them, is bereft of any substance and merit. A prayer has, therefore, been made for quashing of the FIR in question.

4. **SUBMISSIONS OF LEARNED STANDING COUNSEL FOR THE RESPONDENT-U.T. CHANDIGARH:-**

(i) That the accused, including the petitioners, orchestrated a deliberate and deceitful scheme to entice Pushkar Chander Kant and Pankaj Sharma into purchasing injections for sale. This was done even though the company did not possess a valid license or permit to sell these injections within the domestic market. On 16.04.2021, the Company shipped 11,000 injections to Hindaz Corporation in Maharashtra, blatantly disregarding the Government of India's ban on their export, which had been imposed on 11.04.2021.

(ii) Furthermore, a specific secret information was received about the illegal activities of the accused, including the petitioners. Acting on this information, a raid was then conducted at Hotel Taj, Chandigarh, where the petitioners were caught red-handed attempting to finalize the sale of injections without the requisite licence or permission. This clandestine operation revealed the petitioners' intent to bypass legal regulations and profit from the illegal sale of these injections. During the raid, a request letter from the Company, accompanied by a box containing four vials of white powder was recovered from petitioner-Susheel Kumar. This evidence unequivocally demonstrated that the accused were in the process of finalizing an illegal transaction involving the banned injections. The timely intervention by the police prevented the illegal distribution of these injections in the local market.

(iii) The challan, which details the accusations and evidence against the accused, has already been submitted. Consequently, the authenticity and truthfulness of the allegations outlined in the FIR against the petitioners will be thoroughly examined during the trial. At that stage, both parties will get ample opportunity to present their evidence, which will then be tested on the touchstone of cross- examination.

FINDINGS OF THE COURT:-

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. In the present case, the petitioners have been challaned to face trial under Sections 420, 120-B of the IPC, Section 7 of the E.C. Act and Section 27 of the 1940 Act. It is imperative thus to scrutinize whether the allegations levelled in the FIR in question and material collected by the police disclose the Commission of the alleged offences. The petitioners have allegedly committed an offence under Section 420 of the IPC, which for the facility of reference is reproduced hereinbelow.

> *"Section **420.** Cheating and dishonestly inducing delivery of property.*
>
> *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

7. To attract the mischief of an offence under Section 420 of the IPC, deliberate false representation with an intent to deceit, leading

to the delivery of property, is an essential requirement. The statements under Section 161 of the Cr.P.C. of Pushkar Chander Kant and Pankaj Sharma indicate the petitioners offered injections at inflate prices without a valid licence aiming to deceive them. However, there are no allegations of delivery or sale of actual property. Thus, the essential elements to attract an offence under Section 420 of the IPC are missing.

8. In regard to the offences under Section 7 of the E.C. Act and Section 27 of the 1940 Act, it is crucial to understand the distinct regulatory frameworks governing these areas, particularly concerning essential commodities, including drugs. Section 7 of the E.C. Act prescribes penalties for violations of Section 3 of the E.C. Act, which governs the production, supply, and distribution of essential commodities. For ease of reference, Section 3 of the E.C. Act is reproduced hereinunder:-

> ***"3. Powers to control production, supply, distribution, etc., of essential commodities****.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, 1 [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."*

9. A careful analysis of the above reproduced provisions show that the E.C. Act incorporates the definition of 'drugs' as

specified in the 1940 Act. The 1940 Act is a special legislation explicitly designed to oversee the production and distribution of pharmaceutical drugs. Consequently, the procedures provided under the 1940 Act take precedence over the more general provisions of the E.C. Act.

10. In the present case, the allegations involved the illegal manufacture and sale of injectable drugs. Under Section 22 of the 1940 Act, the power to seize such injections is vested exclusively in an Inspector appointed under the Act. The relevant provision is as follows:-

> ***22. Powers of Inspectors.****—(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,—*
>
> *(a) inspect,—*
>
> *(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;*
>
> *(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;*
>
> *(b) take samples of any drug or cosmetic, —*
>
> *(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;*
>
> *(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;*
>
> *(c) at all reasonable times, with such assistance, if any, as he considers necessary,—*
>
> *(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic*

in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed,

and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such dru g or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;

(cc) examine any record, register, document or any other material object found 2 [with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;

> *(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.*
>
> *(2) The provisions of 4 [the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under 5 [section 94] of the said Code.*
>
> *(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.*
>
> *(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter 1 [or refuses to produce any record, register or other document when so required under clause (cca) of sub-section (1),] he shall be punishable with imprisonment which may extend to three years, or with fine, or with both."*

11. These provisions clearly indicate that the police was not empowered to inspect the premises and seize the injections as they did in this case. Given that 1940 Act, as a special legislation, overrides the general provisions of the E.C. Act and the Cr.P.C., the police could not have encroached upon the jurisdiction of a Drug Inspector. Since the search and seizure were conducted in violation of the prescribed legal procedures, there would be no legitimate basis for convicting the petitioners or imposing penalties under Section 7 of the E.C. Act.

12. Furthermore, Section 32 of the 1940 Act, which is crucial in this context, explicitly bars the police from undertaking such actions. The provision is detailed hereinunder:-

> *"**32. Cognizance of offences**—1 [(1) No prosecution under this Chapter shall be instituted except by—*
>
> *(a) an Inspector; or*
>
> *(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or*
>
> *(c) the person aggrieved; or*
>
> *(d) a recognised consumer association whether such person is a member of that association or not.*
>
> *(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.]*
>
> *(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."*

13. In addition, it is pertinent to consider the observations made by Hon'ble the Supreme Court in ***Criminal Appeal No.200 of 2020*** tilted as ***Union of India Versus Ashok Kumar Sharma and others*** decided on 28.08.2020, wherein it has been categorically held as under:-

> *"150. Thus, we may cull out our conclusions/directions as follows:*
>
> *I. XXXX XXXX XXXX*
>
> *II. XXXX XXXX XXXX*
>
> *III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector*

> *under the Act and also his duties, a Police Officer cannot register a FIR under section 154 of the CrPC, 1973 in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC."*

14. The above reproduced provisions of Section 32 of the 1940 Act and the observations of Hon'ble the Supreme Court in *Union of India Versus Ashok Kumar Sharma and others's case (supra)* leave no ambiguity that the police did not have the powers to register an FIR or even conduct an investigation concerning offences under Section 27 of the 1940 Act. Therefore, in the light of the settled law, it is evident that the police exceeded their jurisdiction in the present case. Consequently, their actions were contrary to the provisions of law, and the resulting proceedings would thus, be vitiated.

15. As a sequel to the above discussion, this Court has no hesitation to invoke its inherent jurisdiction under Section 482 of the Cr.P.C./Section 528 of the BNSS, and quash the FIR in question qua the petitioners.

16. The petition is accordingly allowed and FIR No.56 dated 18.04.2021 under Sections 420, 120-B of the IPC, Section 7 of the E.C. Act and Section 27 of 1940 Act and all consequential proceedings arising therefrom are hereby quashed qua the petitioners.

July 29th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No