2024:PHHC:075515

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CRM-M-5341-2018
Date of decision : 30.04.2024

Akash Kumar (since minor) Through Natural Guardian ....Petitioner

versus

State of Haryana ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Dhruv Gupta, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

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PANKAJ JAIN, J. (Oral)

1. By way of present petition filed under 482 of the code, the petitioner seeks quashing of criminal complaint (Annexure P-1) and the summoning order dated 11.09.2017 (Annexure P-2) vide which he has been summoned to face trial for offence punishable under Drugs & Cosmetics Act 1940 & Rules, 1945.

2. Respondent/complainant preferred a complaint against the petitioner who was alleged to be involved in manufacturing & sale of various counterfeit cosmetic products in the name of M/s. Hindustan Unilever Ltd., Haridwar in an unhygienic condition. A huge quantity of popular brand of cosmetic (shampoo of Hindustan Unilever Ltd.), semi-furnished cosmetics (slurry filled in drum ready to fill) and other items like empty bottles, filling machines, caps, small and big drums, few of them containing slurry i.e shampoo which was meant for packaging were found.

3. On the basis of above search conducted, an FIR No. 48 dated 03.05.2016 registered under sections 417, 418, 420 of IPC, 1860 and Section 27-A, Drugs & Cosmetics Act, 1940 & Sections 63, 65, 68 of Copyright Act. The petitioner was put to trial in the aforesaid FIR and he was acquitted in the same by the Ld. Court of Principal Magistrate, Ambala vide judgment dated 02.08.2017 on merits, being found innocent.

4. Counsel for the petitioner while assailing the complaint as will as the summoning order contends that it is a sheer abuse of law as the petitioner was acquitted in the FIR with respect to the same and occurrence constituting the offence. He further claims that the action of Drug Control Officer, Ambala II is hit by Section 300(1) of Cr.P.C. which prohibits double jeopardy.

5. I have heard counsel for the parties & have carefully gone through the records of the case.

6. Before adverting to the factual aspect, it will be apt to peruse Section 300 of the code which reads as under:-

> **300. Person once convicted or acquitted not to be tried for same offence**.
>
> (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.
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> (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State

> Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.
>
> (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.
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> (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
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> (5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any Court to which the first mentioned Court is subordinate.(6)Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code."

7. The provision when gazed in the light of illustrations appended thereto, it is evident that *sine qua non* to invoke 'Doctrine of Double Jeopardy' the accused must show that the offence for which he has been tried earlier in time is same offence for which he is being tried subsequently. Other prohibition is with respect to any other offence on the same facts for which different charge might have been made under Section 221(1) of the Code. The principle is based upon maxim *'nemo*

debet bis vexari si constat curiae quod sit pro una et eadem causa' i.e. no one ought to be vexed twice if it appears to the court that it is for one and the same cause.

8. The Supreme Court in the case of ***Prem Chand Singh vs. State of Uttar Pradesh and another 2020(3) SCC 54***, observed that the prosecution of a person on the basis of a second FIR is not sustainable if its substratum is same as that of the first FIR. The relevant portion of the said judgment reads as under:-

> "11. It is, therefore, apparent that the subject matter of both the FIRs is the same general power of attorney dated 02.05.1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.
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> 12. Section 300 of the Cr.P.C. provides as follows:
>
> > "300. Person once convicted or acquitted not to be tried for same offence.
> >
> > (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-Section (1) of Section 221, or for which he might have been convicted under sub-Section (2) thereof."

> 13. In view of the conclusion that the substratum of the two FIRs are the same and that the appellant has already stood acquitted on 07.08.1998 of the charge with regard to forging any general power of attorney of the respondent, we are of the considered opinion that the subsequent prosecution of the appellant in FIR No. 114 of 2008 dated 09.10.2008 is completely unsustainable. In the result, the FIR dated 09.10.2008, the orders dated 18.12.2015, 31.05.2016 and the impugned order dated 01.03.2017 are set aside. The appeal is allowed."

9. The Supreme Court further in the case of '***T.P. Gopalakrishnan vs. State of Kerala' 2022 INSC 1262***, while discussing the mandate of Section 300 of Cr.P.C. reiterated that Section 300 of the Code bars the trial of a person not only for the same offence but also for any other offence on the same facts. The relevant portion of the said judgment reads as under:-

> "22. Section 300 of the CrPC, 1973 embodies the general rule which affirms the validity of the pleas of autrefois acquit (previously acquitted) and autrefois convict (previously convicted). Sub-section (1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.
>
> 23. Section 300 of the CrPC, 1973 is based on the maxim nemo deber bis vexari, si costest curiae quod sit pro una et eadem causa which means that a person

cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. As per the decision of this Court in ***Vijayalakshmi vs. Vasudevan (1994) 4 SCC 656*** in order to bar the trial of any person already tried, it must be shown that:

(i) he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts,

(ii) he has been convicted or acquitted at the trial, and

(iii) such conviction or acquittal is in force.

24. The whole basis for this provision is that the first trial should have been before court of competent jurisdiction. There must have been a trial of the accused, that is to say, that there should have been a hearing and determination or adjudication of the case on merits. Where the accused has not been tried and as such convicted or acquitted, Section 300(1) shall not be applicable.

25. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide ***Thakur Ram v. State of Bihar AIR 1966 SC 911***."

10. The issue thus is whether the petitioner has been summoned to face trial in the impugned complaint for the same offence in which he has already earned acquittal in FIR case? In order to answer such issue the Court needs to examine gravamen of the allegations against the petitioner in the FIR and complaint.

11. FIR No.0048 dated 03.05.2016 was registered alleging that:

"xxxxxx Near Hargobindpura, Gurudwara, District Ambala where Mr. Akash was found present.

This team disclosed the identity and purpose of visit to Mr. Akash. He disclosed that first floor of this house was taken on rent from Mrs. Neha Wife of Sh. Manoj Kumar Arora R/o House No. 608/13, Italy Colony, Near Hargobindpura, Gurudwara, Barara, Ambala. In this premises I Akash along with my father Sh. Suresh Kumar run the business of manufacturing of cosmetics. Team tried to contact to Sh. Suresh Kumar but failed to contact. Then, team searched out the premises. During search, it was found that the premises was converted into the manufacturing of cosmetics and other reputed brand. The team asked to Mr. Akash the valid cosmetics manufacturing license but he failed to produce/ show the licenses. Then, team took two types of sample mentioned on Form 17 and 17-A and seized the cosmetics, shampoo bottles and other material detail mentioned on Form-16. During inspection/ raid Mrs. Neha Wife of Sh. Manoj Kumar Arora came at the spot and disclosed that she is the owner of the premises and the first floor of the premises was rented out to Sh. Akash Son of Sh. Suresh Kumar and joined in the investigation team. She has given her written statement. During investigation, the documents which were prepared by the team on spot signed by Sh. Akash and Mrs. Neha but suddenly, refused to sign the rest of the documents since both the persons Sh. Akash and Sh. Suresh Kumar were engaged in the manufacturing of counterfeit, spurious cosmetics of Hindustan Lever Limited, Manufacturing and cosmetics in unlicensed area, adulterated cosmetics and also contravened Section 63/65 and 68 of Copyright Act and also contravened Sections 417, 418, 418, 419, 420 I.P.C. and U/s 17-c, 17-d, 17-e which is punishable U/s 27-A Drugs and

> Cosmetics Act, 1940. Hence, you are requested to register the F.I.R. against Sh. Akash Kumar and Sh. Suresh Kumar and investigate from where they were getting these material and other material as they are supplying/ manufacturing counterfeit/ spurious/ unadulterated/ misbranded cosmetics manufacturing in unlicensed residential premises.xxxx"

12. Lalit Kumar Goel, Senior Drug Officer, Ambala Zone appeared as PW-1 and testified in support of the prosecution. His testimony has been discussed by the trial Court which reads as under:-

> **"PW1 Lalit Kumar Goel, Sr. Drug Officer, Ambala Zone** has deposed that on 03.05.2016, he was posted as SDCO Ambala and on the same day, he alongwith Paramjeet Singh (Asstt. Manager) and DCO Ambala went to a house in Italy colony near Gurudwara, where they met Akash son of Suresh Kumar. That in the said house, they found a machine for making Shampoo, packing material and filling machine, which are being used for making Clinic Plus Shampoo. That juvenile Akash failed to produce any manufacturing licence. Then the juvenile disclosed that he does this work with his father Suresh Kumar, who is out of station. Thereafter, Dinesh Rana DCO Amabla called at police station Barara and ASI Balbir Singh at that time came at the spot and thereafter, statement of owner of the house was recorded, who was living in the adjoining house and owner told that she had given the house on rent to Suresh but she cannot produce any rent agreement. Further deposed that DA had taken two samples from the spot and prepared form 17, the copy of form is Ex.PW1/A and receipt form 17-A, which is Ex.PW1/B and some articles were seized vide form no. 16, copy of which is Ex.PWI/C, which bears his

signatures and signatures of DCO Dinesh Kumar, Paramjit and ASI Balbir Singh, whose signatures he identified. Further deposed that DCO had prepared the spot memo, copy of which is Ex.PW1/D, which bears his signatures and signatures of other witnesses. Further deposed that statement of Neha wife of Neeraj (owner) was recorded by DCO, copy of which is Ex.PW1/E, which bears his signatures. Further deposed that he and DCO filed the complaint for the registration of FIR in police station Barara. He identified the juvenile being present in the board. In his cross-examination, he stated that one day before, he received a telephonic call from R.K. Singla, SDC, Haryana, who told that Mr. Paramjit Singh would come to meet him but on that day, Paramjit Singh did not come and Paramjit Singh came on the next day at 9:00 am but he had not given any application to him and he had called DCO Dinesh Kumar. He also stated that neither he had recorded the statement of Paramjit Singh nor any application or authority letter was demanded. He also stated that he had not intimated the police station before conducting any raid. Further stated that they reached at the spot at 10:30 am and had not recorded the statement of any person and they did not tell anything to any person. He also stated that there is no written order of Sh.R.K Singla, being placed on the file. He also stated that he had not recorded the statement of Neha. Further stated that DCO had called the police at 11:00 a.m. He also stated that they had found some empty bottles, some filled bottles of Shampoo, filling machine, caps, drums-both empty and filled, labels etc. and the aforesaid property is not present in the board. He also stated that they do no find any fact or circumstance from

> the spot, so as to relate Akash from the same. He also stated that he had not sent those samples to the lab. He also stated that recovery memo Ex.PW1/C does not bear the signatures of Akash and Neha. He also stated that no independent person like Nambardar, Panch or Sarpanch was joined at the time of preparing memo at the spot by I.O and DCO, though people were crossing from there. Further stated that I.O and DCO had not recorded the statement of Akash DCO might had sent the samples to the lab but he had not sent the same. He also stated that Paramjit gave a complaint to the police in his presence but admitted that said complaint is not on file."

13. Coming on to the impugned complaint, the statement of allegations are as follows:-

> "That on 03.05.2016, a team comprising of Sh. Lalit Goyal, the then Senior Drugs Control Officer, Ambala Zone, Ambala and complainant visited the premises at H.No. 609/13, Itly Colony Near Hargobindpura Gurudawara, Barara, District-Ambala as per orders of State Drug Controller, Haryana in order to investigate an information received from Sh. Paramjeet Singh S/o Sh. Bhag Singh resident of Plot no. 18, Sector- 45, Gurgaon (Haryana) who informed about the illegal activity going on at H.No.- 609/13, Itly Colony Near Hargobindpura Gurudawara, Barara, District-Ambala. During visit Sh. Balbir Singh, ASI, Police Station Barara also accompanied with team. Accused no. 2 Akash Kumar was found present in the premises who told that his father accused no.1 Suresh Kuumar is running this business of manufacturing cosmetics in this premises and further told that accused no. 2 is out of station. The team members

disclosed their identity and the purpose of visit to accused no.1. Accused was found manufacturing for sale various counterfeit cosmetic products in the name of M/s. Hindustan Unilever Ltd, Haridwar in an unhygienic condition. A huge quantity of popular brand of cosmetic (shampoo of M/s Hindustan Unilever Ltd.) semi finished cosmetics (slurry filled in drum-ready to fill) and other items like empty bottles, filling machine, caps, small and big drums few of them containing slurry i.e. Shampoo which were meant for packaging found stocked. Accused no.-2 was asked to produce the valid manufacturing licenses or any other valid documents as required for the manufacturing of these cosmetics but he could not produce any such license/document. Complainant took two kinds of sample nos. DKNA-2/16/29-R and DKNA-2/16/30-R from the accused no.-2 for the purpose of test and analysis as per provisions of the Drugs And Cosmetics Act, 1940 and Rules made their under as per detail mentioned on form-17. Each sample of cosmetic was divided into four portions and it was packed and sealed with the seal impression 'DKN' in presence of team members, witness namely Sh. Paramjeet Singh, Smt. Neha W/o Sh. Manoj Kumar Arora R/o H.No.608/13, Itly Colony, Near Har Gobind Pura Gurudwara, Barara, Distt. Ambala (property owner of premises) and the accused no.2. The members of inspection team, witnesses and accused no.-2 signed on Form-17 but accused no.-2 refused to accept sealed portion of samples, copy of Form-17 and also refused to take the price of samples. However accused no.2 made hand written statement on Form-17 in which he disclosed that two types of sample of cosmetics taken by DCO-Ambala-II for the purpose of test and analysis in my presence from the H.NO. 609/13, Itly Colony, Near Hargobindpura Gurudawara, Barara which is taken on rent form Neha. Accused no. 2 also disclosed that manufacturing of cosmetics Le. shampoo being carried out along with his father i.e. accused no. 1 in the name of other company and relevant record which is mandatory for manufacturing of cosmetics could not produce to the team. Accused no.-2 suddenly turned and refused to give further statement on Form 17. Since accused no. 2 had refused to accept the price of samples taken hence Form no.-17 A was filled however accused no. 2 refused to sign Form no.-17A and refused to take its copy. Original copies of Form-17, Form 17A are filed as **Annexure A-2/1-3 and Annexure A-3.**

On the same date, time and place since the accused no.-2 tailed to produce the records as are required in the manufacturing of the cosmetics as per Act, therefore the cosmetics Clinic Plus Shampoo and empty bottles with cap used to fill the shampoo alleged to be counterfeit with other materials were seized in eleven card board boxes in presence of team members, the accused no.-2 and independent witnesses vide Form 16 of the Act. Accused no.-2 was asked to sign the sealed seized boxes but he refused to sign the boxes. He also refused to give statement on Form-16 even refused to sign the Form-16. All the team members and Sh. Paramjeet Singh signed the Form-16. Original copy of Form-16 is filed as **Annexure A-4/1-2.**

On the spot Smt. Neha W/o Sh. Manoj Kumar Arora made a hand written statement in which she disclosed to the team that she is the owner of the house no. 609/13, Itly Colony, Barara and she rented out first floor of this house to accused no.-1 and accused no.-2 and she has taken Rs. 4000/- in advance as a rent. The statement was attested by the team members and signed by Sh. Paramjeet Singh. Original copy of the statement is filed as Annexure A-5. On the spot, a spot memo was prepared which is self explanatory and signed by the team members and Sh. Paramjeet Singh. The original copy of the spot memo is filed as **Annexure A-6/1-2.**

That on the same day 03.05.2016 an application was moved by complainant to the SHO, Police Station, Barara to take the cognizance and register FIR against accused no.-1 and accused no.-2. The office copy of the application is filed as **Annexure A- 7/1-2."**

14. Principles w.r.t. exercise of jurisdiction under Section 482 Cr.P.C. vis-a-vis quashing of FIR and to criminal proceedings stand well culled out in **State of Haryana and others vs. Ch. Bhajan Lal and others reported as 1992 SCC (Cri) 426** wherein Apex Court held as under:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive

list of myriad kinds of cases wherein such power should be exercised.

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code*

> *or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

15. In view of above, this Court finds that the present petition deserves to be allowed. Complaint as well as summoning order along with all proceedings arising subsequent thereto are hereby ordered to be quashed.

16. Petition stands allowed.

17. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

30.04.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes