

CRM-M-47681-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-47681-2022 (O&M)

Date of decision : April 15, 2024

Kulwant Singh

....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Akshay Jain, Advocate, for the petitioner
Mr. Pardeep Bajaj, DAG, Punjab

KULDEEP TIWARI, J.

1. The petitioner approached this Court seeking quashing of FIR No. 155 dated 8.9.2022, under Section 188 of the Indian Penal Code (in short, the IPC), and under Section 195(1)(b) of the Criminal Procedure Code, (in short, the Cr.P.C.), registered at Police Station City-1, Mansa, and also to seek quashing of promulgation order dated 27.7.2022, issued by respondent No. 2, in exercise of powers conferred upon him under Section 144 of the Cr.P.C., on the ground of being violative of principle of "*encroachment upon the occupied fields*", and against the well settled principle of law that the provisions of special law, i.e. the Drugs and Cosmetics Act, 1940, (in short, the Act) and the Drugs and Cosmetics Rules, 1945, (in short, the 1945 Rules) would override the provisions of the general law.

2. Before embarking upon the issue raised in the instant petition, it would be relevant to deal with the factual aspects of the present case.

3. The District Magistrate, respondent no. 2, vide its promulgation order dated 27.7.2022, in exercise of powers conferred upon him under Section 144 of the Cr.P.C., completely banned the sale of Pregabalin capsules having more than 75 mg per dosage unit and further directed that the Chemist at the time of dispensing the prescription slip, would place his seal, and would also record the date of sale of the said medicine. This order was to remain in force from dated 1.8.2022 to dated 30.9.2022.

4. In the present case, the prosecution agency was set into motion on a complaint made by ASI Satpal Singh, Police Station City-1, Mansa, on dated 7.9.2022, wherein, it was alleged that the present petitioner was arrested carrying polythene bag, which contained about 3 boxes of Pregabalin IP 300 MG Signamore capsules, colour red and white, upon which Signamore was written, with black colour. Every strip contained 15 capsules, total 50 strips, and total capsules were 750, 20/20 strips from each two boxes, and from the third box 10 strips were recovered, and all the capsules were having batch No. TGC07221674 MFG 07/2022 Exp 06/2024, MRP Rs 225.00 per 15 Capsule was written. The petitioner failed to show any document with regard to the objectionable material, as recovered from him, and finding the act of the petitioner in violation of promulgation order dated

27.7.2022, the present FIR was registered against the petitioner. The relevant extract of the FIR is read as under:-

“On 7.9.2022, ASI Satpal Singh along with other police officials was roaming around for the purposes of patrolling and checking of suspicious persons, in his private car, driven by him. When the police party, after crossing New Grain Market, Mansa, was coming to Mansa City through the cremation ground, a person was seen coming on a motorcycle, carrying a polythene bag of black colour on the right side of the handle of motorcycle. He was signaled to stop, but he got perplexed and tried to turn around and his motorcycle as well as polythene bag fell on the ground. During this process, boxes and capsules also fell on the ground which were like intoxicating capsules. The said person was handed over to the accompanied officials and the scattered capsules and boxes were collected. Thereafter, boxes were taken out of polythene bag and on counting it came to be 3 boxes of Pregabalin IP 300 MG Signamore capsules, colour red and white, upon which Signamore was written with black colour. Every strip contains 15 capsules, total 50 strips and total capsules were 750, 20/20 strips were in each of the two boxes and from the third box 10 strips were recovered and all the capsules were having batch No. TGC07221674 MFG 07/2022 Exp 06/2024, MRP Rs 225.00 per 15 Caps was written. The motorcycle bearing No. PB31M5583 of red and white colour, was also checked and no document regarding ownership etc. was recovered. The petitioner could not produce

any document for keeping the aforesaid material with him, which was in violation of order No. 2021/FS/FK-2-25645-25711, issued by the District Magistrate, Mansa. The aforesaid recovered material was taken into possession vide separate recovery memos.”

5. In asking for the relief of quashing of the instant FIR, the learned counsel for the petitioner submits that the petitioner is doing the business of retail sale of drugs/medicines under the authority of licenses issued in Form 20 and Form 21 of the 1945 Rules, for which he has placed reliance upon Annexures P/1 and P/2, and would submit that the licenses of the petitioner, which are in force from dated 8.10.2018 to dated 7.8.2023, which makes it clear, and unambiguous, authorizing the petitioner for selling, stocking or exhibiting (or offering) for sale, or distributing by way of retail sale drugs specified in various schedules except those specified in Schedule X of the 1945 Rules.

6. Though, the learned counsel for the petitioner has also laid challenge, through the instant petition, to the promulgation order (*supra*) Annexure P/3, but at the time of arguments, since the above mentioned order ceased to be in operation, as the tenure has already expired way back on dated 30.9.2022, therefore, he did not press for the relief of quashing of promulgation order. However, he proceeded to address arguments regarding the registration of the FIR, without compliance of provisions of Section 195(1)(a) of the Cr.P.C., and submits that the learned trial court has no power to take cognizance for offences under Sections 172 to 188 of the IPC (both inclusive),

until and unless there is a written complaint made by a public servant, or any Officer who is administratively subordinate. He further draws the attention of this Court to Section 2(d) of the Cr.P.C. which defines the word "complaint". Section 195(1)(a)(i), and section 2(d) of the Cr.P.C. read as under:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

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except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."

"Section 2(d) complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.--A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

7. The conjoint reading of above two provisions, absolutely makes it clear that written complaint by an authority concerned is required for the learned trial court to take cognizance for the offences punishable under Sections 172 to 188 of the IPC (both inclusive).

8. It is not under dispute that the petitioner is holding a legal licence under the 1945 Rules, and therefore, is authorized to sell, stock or exhibit (or offer) for sale, or distributing by way of retail sale drugs specified in various schedules, except those specified in Schedule X of the 1945 Rules. Since the instant FIR, has been registered without any written complaint, therefore, it is a clear cut case where no compliance of Section 195 Cr.P.C. has been made, therefore, such action of registration of FIR is in fact, *void ab-initio*. This Court lends strength of the above observations, from the judgment passed by the Hon'ble Apex Court in **Saloni Arora vs State (NCT of Delhi), (2017) 3 Supreme Court Cases 286**, wherein, the Hon'ble Apex Court has observed as under:-

“8) Having heard the learned counsel for the parties and on perusal of the record of the case, and further since the learned counsel for the respondent in the course of his submissions fairly conceded that the impugned order is not legally sustainable on a point of law and, in our view rightly so, we are inclined to allow the appeals and set aside the impugned orders.

9) As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this

Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.

10) It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

“There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 CrI.P.C. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildar’s complaint in writing is, therefore, without jurisdiction ab initio.” (Emphasis supplied)

11) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (supra) quoted above.”

9. Further, the Coordinate Bench of this Court in case of ***Shubham vs State of Haryana, 2022 SCC OnLine P&H 4072***, has held that the non compliance of Section 195 Cr.P.C. is a defect that cannot be cured. The relevant extract is read as under:-

“15. It is pivotal to observe that Section 195 Cr.P.C. opens up with the word “No Court” and thus, imposes an express bar for any Court to take cognizance of the offences contemplated thereunder, except in accordance with the procedure prescribed therein.

16. Pertinently, it has been explicated that merely because the offence under Section 188 IPC is cognizable, the police is not authorised to register FIR, as the same, if, results in submission of police report under Section 173 (8) of the Code, is barred by Section 195(1)(a) read with the definition of “complaint” provided in Section 2(d) of the Code, that complaint does not include a police report.”

10. Further, the Delhi High Court in ***Mohan Kukereja vs State Govt. of NCT of Delhi, 2019 SCC OnLine Del 6398*** has gone to the extent, and observed that defect for non compliance of Section 195 Cr.P.C. cannot be cured subsequently by filing

supplementary charge sheet, or by way of complaint by the public servant, after cognizance has been taken, and proceed to quash the proceedings initiated without mandatory compliance of Section 195 of the Cr.P.C. The relevant extract is read as under:-

“Non-compliance of Section 195 Cr.P.C. is a defect which cannot be cured subsequently as is sought to be done by the prosecution by filing a supplementary charge sheet or by way of a complaint given by the public servant after cognizance has been taken.”

11. In view of the law laid down in the above said judgment, and the admitted fact that there is no compliance of Section 195 Cr.P.C. for registration of the present FIR, therefore, the entire proceedings initiated against the present petitioner, are *void ab-initio* and therefore, are liable to be quashed. The instant petition is **allowed**. FIR No. 155 dated 8.9.2022, under Section 188 of the Indian Penal Code, and Section 195(1)(b) of the Criminal Procedure Code, registered at Police Station City-1, Mansa, and all subsequent proceedings arising therefrom, are ordered to be **quashed**.

12. Since, the main petition has been allowed, all pending applications, if any, are ordered to be disposed of.

April 15, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No