

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.83580 of 2024**

Arising Out of PS. Case No.-228 Year-2020 Thana- SINGHESHWAR District- Madhepura

Kamal Gupta S/O Suresh Chandra Gupta Resident of F- 62, 1st Floor, P.S-  
Rajouri Garden, Tagore Garden, New Delhi, Distt.- West Delhi, Delhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

**CRIMINAL MISCELLANEOUS No. 5408 of 2023**

Arising Out of PS. Case No.-228 Year-2020 Thana- SINGHESHWAR District- Madhepura

1. BIMAL KUMAR VERMA Son of Lalu Prasad Verma Resident of Azad  
Nagar Ward No.- 09, Near Chaiti Durga Asthan, Azad Nagar, Police Station  
- Madhepura, District - Madhepura.
2. Rupesh Kumar Son of Shivshankar Sahay Resident of Near Abhyas Madhya  
Vidyalay, Ward No.- 12, Azad Nagar, Police Station - Madhepura, District -  
Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

(In CRIMINAL MISCELLANEOUS No. 83580 of 2024)

For the Petitioner/s : Mr. Sanchay Srivastava, Advocate  
Ms. Sonali Priya, Advocate  
Mr. Sushant Srivastava, Advocate  
Mr. Abhiyanshu Ranjan, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP  
(In CRIMINAL MISCELLANEOUS No. 5408 of 2023)

For the Petitioner/s : Mr. Siya Ram Sahi, Sr. Advocate  
Mr. Anirudh Kumar Sinha, Advocate  
For the Opposite Party/s : Mr. Ram Anurag Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY**  
**CAV JUDGMENT**

**Date : ...-02-2026**

Heard learned counsel for the petitioners and the learned

APP appearing on behalf of the State.

2. The present applications have been preferred for  
quashing and to set aside the order of cognizance dated 22.08.2022



passed by the learned Sessions Judge-cum-Special Judge, NDPS, Madhepura in connection with NDPS Case No. 15/2020(S)/CIS No. 15/2021, arising out of Singheshwar P.S. Case No. 228 of 2020 by which learned Sessions Judge took cognizance under Sections 8(c), 21(c), 22(c), 23, 24, 25, 27(A) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985) and Section 30(a) of the Bihar Prohibition and Excise Act, 2018 and for quashing the order/form of charge with three heads dated 10.09.2024 by which charge has been framed under Sections 21(c), 22(c) of the Narcotics Drugs and Psychotropic Substances Act and Section 30(a) of the Bihar Prohibition and Excise Act, 2018.

3. The facts giving rise to the present application is to the effect that from a written complaint lodged by Gangasagar Chaudhary, A.S.I., Singheshwar Police Station stating that on 27.09.2020 at about 16:30 hours, while on patrolling duty, he received a secret information that a large quantity of codeine-based intoxicants was being transported in a container truck (No. HR55W/9959) and a Tata Magic vehicle to the house of Tarun Singh at Village Rampatti, Ward No. 05. After informing senior officers, including the Circle Officer, he proceeded towards the spot and found out that certain cartons were being unloaded from



the container truck and loaded into the Tata Magic by Tarun Singh, Bimal Kumar, Mukesh Singh, Suman Das and others. On seeing the police, the accused persons tried to flee, however, one person, Suryamani Pandey, driver of the container truck, was apprehended. Subsequently, in the presence of two independent witnesses, Babul Kumar and Munna Yadav, the informant and the Circle Officer conducted personal searches before proceeding further.

4. That after the search following items were seized, which are as follows:

275 cartoons of Wiscoff Company's Codeine Phosphate & Triprolidine Hydrochloride Syrup.

5. Thereafter, following due procedure and in the presence of the Magistrate and two independent witnesses, the search of the white Tata Magic vehicle (Engine No. 275IDI07-NRYSJ7470; Chassis No. illegible) was conducted. During the search, seven cartons containing Wiscof company's Codeine Phosphate and Triprolidine Hydrochloride syrup were recovered from the said vehicle.

6. The learned Counsel for the petitioner submits that the F.I.R. is false and the petitioner has been falsely implicated in the case without any evidence against him. Even if the allegations are assumed to be true, no offence under the N.D.P.S. Act or any



other law is made out against him. The petitioner is only a Whole-Time Director of Om logistics Ltd., and he has been wrongly shown as the “owner,” while the company itself has not been made an accused.

7. The learned counsel for the petitioner submits that Om Logistics booked a consignment on the instruction of client M/s Windlas Biptexh Pvt Ltd. (Dehradun), which is the licensed manufacturer of the said cough syrup. The learned counsel for the petitioner further submits that a Good Receipt was generated by M/s Om logistics for the transportation of the said Wiscof Cough syrup to two licensed pharmacies viz., 1. Bimal Medical Agency & 2. Yash Pharma in Madhephura, Bihar. The Learned Counsel further submits that both the consignees have valid license to sell Schedule H Drug including codeine. It has next been submitted that the Central Government, exercising powers under Section 2(xi)(b) of the NDPS Act, through S.O. No. 826(E) dated 14.11.1985, declared that Codeine (Methyl Morphine) and its salts, including codeine phosphate, containing not more than 100 mg per dosage unit and not exceeding 2.5% concentration in undivided preparations, and used in therapeutic practice, shall be treated as a “manufactured drug” within the meaning of the act. The learned counsel for the petitioner next submits that the Hon’ble



Uttarakhand High Court in the case of M/s Windlas Biotech Pvt Ltd. v. Union of India (Judgment dated 11.01.2013), held that cough syrups containing codeine phosphate within the limits prescribed by the Central Government notification cannot be treated as narcotic drugs. Therefore, the State excise department was directed not to charge excise duty on such cough syrups if they complied with the prescribed limits. The learned counsel for the Petitioner next submits that the truck and Tata Magic in question is that the Truck was carrying two consignments respectively and in order to deliver one of the consignments the products were unloaded and shifted to Tata Magic Vehicle.

8. Learned A.P.P. for the State has submitted that the truck of the petitioner was found to be carrying a consignment which was banned in the State of Bihar and huge quantity was recovered which falls under the commercial quantity. It has further been submitted by the learned A.P.P. for the State that by Notification No. 11 dated 18.10.2016, the State of Bihar has notified all medicines and medicinal preparation containing codeine to be intoxicant for the purpose of the Act. It has been submitted that as the petitioner's company was transporting two containers of cough syrup which contained codeine without any secured locking system, although, they had provided a bill of the



same but their acts were found to be suspicious and therefore, the consignment was seized and the petitioner's company was rightly made an accused in the said case.

**Cr. Misc. No. – 5408 of 2023**

9. The learned counsel appearing in Cr. Misc. No. 5408 of 2023, at the outset, submits that as far as second part of the prayer made in paragraph-1 with regard to quashing of the order dated 23.03.2021 is concerned, he shall not be pressing the same.

10. Learned counsel for the petitioners submit that the petitioner no 1 is proprietor of M/S Bimal Medical Agency, Madhepura and that he holds a valid license at the alleged time of occurrence, whereas petitioner no 2 is the proprietor of M/S Yash Pharma, Madehepura. Learned Counsel further submits that the petitioner's firm are authorized stockists of a drug manufacturing company namely M/S Windlas Bio Tech Pvt. Ltd. Learned counsel for the petitioners further submits that there is a distributor in Ranchi to whom the petitioner's placed orders for the supply of cough syrups. It is next submitted that the syrup contains codeine which is one of the ingredients within the prescribed limit for which Drugs Act/Rule permitted. It has next been submitted that the syrup were manufactured by the company on the strength of



Drug license and in Drugs act, FIR can be registered by Drug Inspector and not by Police officer. The Learned counsel submits that the allegation is fake and frivolous and that the learned trial court has not applied his judicial mind and took cognizance in the matter in routine manner.

11. Learned APP for the State has vehemently opposed the prayer for quashing and has filed a counter affidavit stating that codeine is an intoxicant and its use is banned in the State of Bihar since the implementation of the Bihar Prohibition and Excise Act, 2016. It is further stated that the averments made in paragraphs 4, 5, 6, 7, 8, 9 and 10 have been deliberately made to cause a miscarriage of justice. Learned APP further submits that the cough syrups were not seized from the ordinary place of business of the petitioners; rather, they were seized from a truck and a Tata Magic vehicle. The truck driver also failed to produce valid documents relating to the said items, whereupon the same were seized.

12. Having heard learned counsel for the parties and having perused the documents on record along with the respective pleadings of the parties, this court finds that this is yet another case wherein the police officials have lodged an F.I.R. against the accused persons for violation of the provision of N.D.P.S. Act in a case where cough syrup containing codeine was seized. However,



the prosecution has not taken pains in verifying as to the fact that the said Wiscof Cough Syrup, which was seized from the containers was a medicinal product. This Court has come across similar issue where the Cough Syrup containing codeine under different brand name have been seized by the police in Bihar on the ground that the medicinal products containing codeine are banned in the State of Bihar. This Court has taken note of the circular dated 14.11.1985 issued by the Government of India which has also been brought on record wherein the list of narcotic drugs are mentioned and entry 35 thereof is as follows : “Codeine (Methyl Morphine) and its salts (i.e., including codeine phosphate), dilutions and preparations containing not more than 100 milli grams of the drug per dosage unit and with a concentration of not more than 2.5 percent in undivided preparations and which has been established in therapeutic practice”.

13. From perusal of Section 8 of the N.D.P.S. Act, it would be evident that prohibition contained therein is applicable to narcotic drugs and since Wiscof Cough Syrup contains codeine compounded with one other ingredients namely Cholorophenol menate and it contains merely 10 mg. per dosage unit of 5 ml., which is not more than 100 mgs. of the drugs per dosage unit in



undivided preparations and therefore it cannot be rated as a narcotic drug and the provisions of Section 8 will not apply. The Division Bench of the High Court, Allahabad in the case of Vibhor Rana vs. Union of India while deciding a similar issue rendered the judgment dated 24.12.2021 and taking the entire notification and considering the seizure of Phensedyl Cough Syrups, it was held that the composition of New Cough Linctus was found to be 5 ml. and each dosage unit thereof contains 10 mg. of codeine phosphate I.P. besides chlorpheniramine maleate I.P. and thus it falls within the exception to entry 35 of the notification dated 14.11.1985. The Division Bench of the Hon'ble Allahabad High Court had gone on to quash the entire proceedings arising out of the complaint lodged for offences under Sections 8, 21(c), 22, 25, 29 and 60(3) of the N.D.P.S. Act.

14. In view of such settled principle of law and finding the facts and circumstances of the case to be similar to the ones where cough syrups seizure had given rise to lodging of FIR without ascertaining the fact that the same is covered under the notification of Central Government, I find that the continuation of the criminal proceedings would amount to abuse of the process of law and hence the impugned order dated 22.08.2022 whereby cognizance has been taken against the petitioners passed by the



learned Sessions Judge-cum-Special Judge, NDPS, Madhepura in connection with NDPS Case No. 15/2020(S)/CIS No. 15/2021, arising out of Singheshwar P.S. Case No. 228 of 2020 as well as the order/form of charge with three heads dated 10.09.2024 by which charge has been framed under Sections 21(c), 22(c) of the Narcotics Drugs and Psychotropic Substances Act and Section 30(a) of the Bihar Prohibition and Excise Act, 2018, as far as the petitioner, Kamal Gupta (in Cr. Misc. No. 83580 of 2024) is concerned and the entire proceedings stand quashed against all the petitioners.

15. Both the applications stand allowed.

**(Sourendra Pandey, J)**

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