
(2013) 07 MP CK 0358

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3162 of 2012

Ajay Agrawal

APPELLANT

Vs

Kalicharan Shivhare and Another

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 319, 482
Drugs and Cosmetics Act, 1940 — Section 32, 32A
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 07 MP CK 0358

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant; Ravi Sharma, Advocate for Respondent No. 1 and Shri R.K. Shrivastava, Panel Lawyer for Respondent No. 2/ State, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition has been preferred u/s 482 of Cr.P.C. for quashing the order passed in Criminal Revision No. 1/2012 on 10.4.2012 by Third ASJ, Shivpuri, dismissing the revision preferred against the order passed by JMFC, Kolaras, in Criminal Case No. 727/08 on 13.12.11, whereby charge u/s 420 of IPC has been framed against the petitioner. The brief facts of the case are that respondent No. 1/complainant filed a private complaint alleging that he runs a medical store in the name and style of Nishant Medical Store. He purchased tablets ciprofloxacin and priprofloxacin from the medical shop which runs by the petitioner in the name and style of Praveen Medico and Surgico, near Gayatri Temple, Kolaras, vide bill No. 109 on 4.10.2006. It is further alleged that on 6.10.2006 Drug Inspector, Shivpuri, inspected the shop of the complainant and took the sample of aforesaid tablets and sent the same for analysis. Upon analysis, it was found that sample was not of standard quality, therefore, the Drug Licensing Authority, Shivpuri, cancelled the drug licence of the complainant/respondent. Then the complainant lodged a written report at City Kotwali, Distt.

Shivpuri, and thereafter has filed the private complaint. The learned Magistrate directed the police to hold an enquiry and after enquiry, report was filed, upon which learned Magistrate has taken cognizance against the petitioner u/s 420 of IPC. The petitioner appeared before the learned trial Court and the learned trial Court after recording the statements of complainant and his witnesses u/s 244 of Cr.P.C., framed charge u/s 420 of IPC against the petitioner. The petitioner preferred revision in the Sessions Court against framing of charge which was dismissed by the learned ASJ. Being aggrieved, this petition has been filed.

2. It is submitted by the learned counsel for the petitioner that order passed by the Courts below is neither legal nor just, hence, liable to be set aside. Prima facie no offence u/s 420 of IPC is made out against the petitioner. The licence No. 173/97-B-174/97 belongs to Dr. Smt. Sita Goyal who categorically stated in the Court that she does not know the petitioner and she runs a medical store in the name and style of Praveen Medico and Surgico Kolaras, Distt. Shivpuri. She has also stated that petitioner has never conducted any business on her behalf. It is further submitted that bill number is not printed on the alleged bill and the same is written in the handwriting of a person and it is also not proved that said handwriting belongs to the petitioner. From the evidence adduced by the complainant, it is not proved that petitioner sold any tablets to him. The alleged bill was forged by the complainant himself. It is further submitted that complainant has been prosecuted in two cases bearing Nos. 1162/2007 and 1460/2007 in the Court of CJM, Shivpuri, initiated on the complaint of Drug Inspector for selling substandard tablets. In these cases, petitioner was not arrayed as an accused and complainant filed an application u/s 319 of Cr.P.C. and u/s 32-A of the Drugs and Cosmetics Act for arraying the petitioner as an accused. Since the applications were allowed by the CJM, Shivpuri, in both the cases, petitioner preferred separate criminal revisions No. 113/10 and 114/10 in the Court of Sessions Judge, Shivpuri. The learned ASJ, Shivpuri, vide order dated 6.10.10 allowed the revisions and dismissed the applications. Despite the above fact, the petitioner is being harassed unnecessarily by the complainant by filing a false complaint. By placing reliance on *P. Vijayan Vs. State of Kerala* and *Another*, and *Dilawar Balu Kurane Vs. State of Maharashtra*, , it is submitted that no prima facie case is made out against the petitioner. It is prayed that the orders passed by both the Courts below be set aside.

3. Learned counsel for respondent No. 1 as well as learned Panel Lawyer for respondent No. 2/State have supported the impugned order and submitted that from the evidence adduced on behalf of the complainant, prima facie charge u/s 420 of IPC is made out.

4. As per the complaint filed by the respondent No. 1/complainant, petitioner runs a medical store in the name and style of Praveen Medico and Surgico, Near Gayatri Mandir Kolaras, from where he has purchased tablets ciprofloxacin and priprofloxacin vide bill No. 109. This fact has been stated by complainant Kalicharan in his statement (Annexure P/5) which is corroborated by the

statement of Ramswaroop (Annexure P/6). Annexure P/7 is the copy of statement of Raghuveer Singh, ASI, who has inquired into the complaint in pursuance of the directions of JMFC, Kolaras. Annexure P/8 is the photocopy of the statement of Dr. Sita Goyal in which she has stated that she is a registered medical practitioner. She also runs a medical store in the name of Praveen Medico and Surgico, Kolaras. Her licence number is 173/97-B 174/97 which is still in existence. On 4.10.2006 also the aforesaid licence was in her favour. In her licence address of Dharmshala Road Kolaras has been mentioned where she runs the medical store.

5. From the perusal (Annexure P/2), it appears that it is a printed bill of Praveen Medico & Surgico, Near Gayatri Mandir Kolaras, Distt. Shivpuri (M.P.) P.H. (07494) 242740 Mob. 94254-89426, D.L. No. 173/97-B174/97.

6. The drug licence number which is mentioned in Annexure P/2 has been granted in favour of Dr. Sita Goyal. In Annexure P/2 the address of Praveen Medico and Surgico has been mentioned near Gayatri Mandir Kolaras. Dr. Sita Goyal has categorically stated on being questioned by the Court that she does not know the accused. She does not sell the medicines to the retailers. Thus, from the statement of Dr. Sita Goyal, it becomes clear that the bill (Annexure P/2) is forged.

7. From the statement of the complainant Kalicharan Shivhare and the witnesses Ramswaroop and Raghuveer Singh, prima facie it appears that tablets ciprofloxacin and priprofloxacin have been purchased by the complainant from Ajay Agrawal vide bill No. 109. These medicines have been found of substandard quality after analysis. Thus, prima facie the ingredients of Section 420 of IPC are present.

8. The submission of learned counsel for the petitioner that as licence No. 173/97-B-174/97 belongs to Dr. Sita Goyal who has stated that she does not know the petitioner and that she runs a medical shop in the name and style of Praveen Medico and Surgico, Dharmshala Road, Kolaras, no offence is made out against the petitioner, is devoid of any merits. The bill (Annexure P/2) has been alleged to be given by the petitioner after selling the medicines to the complainant. The submission of learned counsel that it is not proved that petitioner has sold the tablets to the complainant has no substance because the statement of the complainant is corroborated by witnesses Ramswaroop who accompanied him at the time of purchase of the tablets. The next contention that the complainant was prosecuted for the offence u/s 32 of the Drugs and Cosmetics Act, therefore, with intent to defend him, he fabricated a false case is also devoid of any merits at this stage. The submission of learned counsel for the petitioner that at the time of inspection, the bill (Annexure P/2) was not produced before the Drug Inspector cannot be accepted.

9. The submission of learned counsel for the petitioner that petitioner cannot be prosecuted twice for the same offence and for any other offence on the same

facts has no merits because the application filed by the complainant u/s 319 of Cr.P.C. has been dismissed, therefore, it cannot be held that earlier the petitioner was prosecuted in case Nos. 1162/07 and 1460/07.

10. The Apex Court in Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, while opining that the High Court in exercise of its jurisdiction u/s 482 of the Code does not function either as a court of appeal or revision, held as under:-

7. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

11. As noticed earlier, *prima facie* the evidence is available against the petitioner

for commission of offence u/s 420 of IPC, therefore, the case laws relied on by the learned counsel for the petitioner are of no help to the petitioner. In view of the above analysis, I find that prima facie material is available against the petitioner for framing charge u/s 420 of IPC. The petition is devoid of any merits and it is hereby dismissed.