
(2012) 09 JH CK 0023

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4722 of 2001

Awadh Kishor Rajgarhia

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 4
Drugs and Cosmetics Act, 1940 — Section 27, 28, 32
Penal Code, 1860 (IPC) — Section 274, 275

Citation : (2013) 2 AJR 44 : (2013) 1 JLJR 580

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Ravindra Kumar Sinha, for the Appellant; H.K. Shikarwar, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. This application has been filed for quashing of the entire criminal proceeding of Chaibasa Sadar P.S. Case No. 110 of 1993 (G.R. No. 692 of 1993) including the order dated 08.02.2001 passed by the then Chief Judicial Magistrate, In-charge Chaibasa, West Singhbhum, whereby and whereunder he, took cognizance of the offences punishable under Sections 274 and 275 of the Indian Penal Code and also under Sections 27 and 28 of the Drugs and Cosmetics Act, 1940 against the petitioner.

2. Before adverting to the submission advanced on behalf of the petitioner, the case of the prosecution needs to be taken notice of:-

3. It is the case of the prosecution that there was rumor about the spurious drugs being available in the Store of Civil Surgeon-cum-Chief Medical Officer, West Singhbhum, Chaibasa. As soon as Civil Surgeon-cum-Chief Medical Officer,

came to learn about it, he made request to the Drug inspector, Jamshedpur to visit the Store and to collect the samples. On such information, the Drug Inspector, on 17.04.1993, collected various drugs including Sulphaguinadine Tab. (bearing Batch No. 9001, Mfg. date 3/91 Exp. date 2/96), in presence of. P.A. to Deputy Commissioner, West Singhbhum, Chaibasa and also other persons. Thereupon, those drugs were sent for its testing before the Government Analyst, Ghaziabad. The drugs, having been tested by the Analyst, were found of substandard quality.

4. Thereafter, Additional Deputy Commissioner, West Singhbhum, Chaibasa submitted a written report before the Officer-in-Charge, Sadar Police Station, Chaibasa. Upon which, a case was registered under Sections 274 and 275 of the Indian Penal Code and also under Sections 27 and 28 of the Drugs and Cosmetics Act, 1940 against this petitioner, who happened to be supplier of the aforesaid drug and also against the Manufacturer namely, Avron Laboratories, Hoogly.

5. On submission of the charge sheet, cognizance of the offence punishable under Sections 274 and 275 of the Indian Penal Code and also under Sections 27 and 28 of the Drugs and Cosmetics Act, 1940 was taken vide order dated 08.02.2001 against the petitioner, which is under challenge.

6. Mr. Sinha, learned counsel appearing for the petitioner submits that the prosecution under the Drugs and Cosmetics Act, 1940 can be maintained if the case is instituted by an Inspector or by the person aggrieved or by a recognized consumer association and not on report by any of the persons, in view of the provision as contained in Section 32 of the Drugs and Cosmetics Act, 1940, but here in that instant case, the written report, upon which the case was instituted, has been lodged by the Additional Deputy Commissioner, West Singhbhum, Chaibasa, on which report, charge sheet was submitted and hence, the prosecution can never be maintained under the Drugs and Cosmetics Act. So far charges under the Indian Penal Code is concerned, that also cannot be maintained as any offence concerning with "adulterated drugs" is covered under the Drugs and Cosmetics Act, a special legislation, which will have overriding effect over the general law by virtue the provision, as contained in Section 4 Cr.P.C.

7. Under the situation, the order taking cognizance is fit to be set aside.

8. Mr. Shikarwar, learned counsel appearing for the State submits that it is not that the case lodged by Additional Deputy Commissioner, Chaibasa, West Singhbhum is only with respect to commission of the offence under the Drugs and Cosmetics Act, 1940 rather also on account of commission of the offence under Sections 274 and 275 of the Indian Penal Code and in such situation, the prosecution can easily be maintained.

9. I do not find any substance in the submission advanced on behalf of the State.

10. It has not been disputed that the Drugs and Cosmetics Act, 1940 deal with the drug, which is misbranded, adulterated, or spurious and, therefore, sale and supply of the adulterated drugs would be covered under the provision of Drugs and Cosmetics Act, 1940, if that is so, then the prosecution, under the general law, is not permissible by virtue of the provision as contained in Section 4 Cr.P.C.

11. Further, I do find that the prosecution, under the Drugs and Cosmetics Act, 1940, can be maintained, only when it is instituted on the report submitted by the Inspector or by the persons aggrieved or by a recognized consumer association whether such person is a member of that association or not.

12. In this respect, provision of Section 32 of the Drugs and Cosmetics Act, 1940, be taken notice of, which reads as follows:-

32. Cognizance of offences.-(1) No prosecution under this Chapter shall be instituted except by an Inspector [or by the person aggrieved or by a recognized consumer association whether such person is a member of that association or not.]

(2) No Court inferior to that of [a Metropolitan Magistrate or of a Judicial Magistrate of the first class] 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 commission which constitutes an offence against this Chapter.

13. Thus, there remain no doubt that the prosecution can be maintained under the Drugs and Cosmetics Act, 1940 only when the person, who, is competent under the aforesaid provision, launches a prosecution under the Drugs and Cosmetics Act, 1940.

14. Here in the instant case, admittedly the prosecution, has never been launched either by Inspector or by the aggrieved person, rather it has launched by the Additional Deputy Commissioner, West Singhbhum, Chaibasa, upon which the matter was taken for investigation and the charge sheet was submitted upon which the cognizance of the offence has been taken and hence, order taking cognizance is certainly bad.

15. Accordingly, entire criminal proceeding of Chaibasa Sadar P.S. Case No. 110 of 1993 (G.R. No. 692 of 1993) including the order dated 08.02.2001 is hereby, quashed so far this petitioner is concerned. In the result, this application is allowed.