

(2008) 09 AHC CK 0251
In the Allahabad High Court

Brahmaji	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 17, 17B, 18, 27
Penal Code, 1860 (IPC) — Section 274, 275, 276, 41, 411
Trade Marks Act, 1999 — Section 103, 104

Citation : (2008) 09 AHC CK 0251

Hon'ble Judges : S.C. Nigam, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amar Saran and S.C. Nigam, JJ.—Heard Shri K.D. Tiwari, learned Counsel for the petitioner and learned Additional Government Advocate representing the State.

2. This writ petition has been filed for quashing of the first information report lodged at case crime No. 981 of 2008, under Sections 274/275/276/419/420/41/411 IPC; Sections 103/104 of Trade Marks Act and Sections 18/27 of the Drugs and Cosmetics Act, police station Kotwali Padrauna, district Kushi Nagar.

3. The allegations in this case are extremely grave and reflect the cancer of illicit manufacture and sale of illegal/spurious drugs and medicines, which has become all pervasive in our society and has become a cause of grave threat to the health of so many innocent patients and purchasers of medicines who are not only dishonestly deprived of their funds, but also often lose the life of a dear one who is administered these fake drugs.

4. The allegations in the FIR were that on 13.8.2008 SI Mathura Rai, received information that the petitioner, resident of Gopalganj, Bihar had taken a room in the house of Chauthi near Belwa Chungi, in Kasba Padrauna, for dealing in spurious or sub-standard drugs and medicines and had collected a huge stockpile

of such medicines. On that information after apprising the S.P. and obtaining orders from the Chief Medical Officer, Kushi Nagar, SI Mathura Rai along with other police personnel accompanied by Shri Prabhat Kumar Tiwari, Drug Inspector of the concerned district, raided the said premises. The landlord Chauthi was present, but the petitioner is said to have run away. Chauthi stated that he had given the said room on rent to Brahmaji, the petitioner and one of the keys was in the petitioner's possession. When the room was got opened, a large quantity of apparently spurious drugs and samples of medicines were found in the said room, which were to the tune of over Rs. 500,000/- (rupees five lacs). No licence for keeping the said drugs and medicines was produced by Chauthi and even the petitioner had no licence for dealing in the said drugs.

5. Learned Counsel for the petitioner contends that the petitioner was never a tenant of the said house nor did he have the keys of the room.

6. We are not concerned with such bald statements made in the writ petition pertaining to the defence of a case, which can be raised by him at the appropriate stage. We also find no reason why the co-accused would involve the petitioner in the offence if he had nothing to do with the drugs.

7. Therefore, we find no good ground for quashing the FIR or interfering with the investigation in the aforesaid case. No relief can be given to the petitioner.

8. However, as it has been pointed out that in spite of the attempts by the State this business of dealing in spurious drugs continues unabated and even though the offence u/s 27 of the Drugs and Cosmetic Act has been made punishable for life in the State of U.P., the persons dealing in spurious drugs and playing with the lives of the poor consumers continue their nefarious activities without check.

9. Section 27 of the Drugs and Cosmetics Act, 1940 as amended by U.P. Act 47 of 1975, with effect from 15.9.75 reads as follows:

27. Penalty for manufacture, sale, etc. of drugs in contravention of this Chapter: Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes-

(a) any drug-

(i) deemed to be misbranded under Clause (a), Clause (b), Clause (c), Clause (d), Clause (f) or Clause (2) of Section 17 or adulterated u/s 17-B, or

(ii) without a valid licence as required under Clause (c) of Section 18; or

(b) any drug other than a drug referred to in Clause (a) in contravention of any of the provisions of this Chapter or any rule made thereunder, shall be punished with imprisonment for life:

Provided that the Court may, for any special reason to be recorded in writing, impose a sentence of imprisonment which is less than imprisonment for life.

10. We, therefore, direct the Director General of Police, U.P., Principal Secretary

(Home) U.P., Director General (Medicine and Health), U.P. and the Drugs Controller, U.P. to file detailed counter affidavits within three weeks mentioning therein the number of raids that have been conducted in the past one year relating to the offence of dealing with spurious and sub-standard drugs, the number of persons, who have been arrested in the said crime, how many have secured bail, whether there is any estimate of the extent of prevalence of spurious drugs in the market and what machinery and drug regulatory infrastructure for rigorous drug quality control and enforcement has been set up in U.P. for checking the adulteration, manufacture and sale of spurious or sub-standard drugs and medicines.

11. We would also like a reply from respondents No. 2 and 3 as to what measures have been taken for effecting the arrest of the petitioner by the next date of listing.

12. List this case on 13.10.2008 for further orders.

13. A copy of this order shall be given to the learned Additional Government Advocate within 48 hours.

14. At this stage, learned Counsel for the petitioner submits that this petition may be dismissed as not pressed. The prayer is refused.