

(2021) 08 JH CK 0021

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1340 Of 2019

Charanjit Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Jharkhand State Clinical Establishment Regulation Rules, 2013 — Rule 11
Code Of Criminal Procedure, 1973 — Section 457
Clinical Establishment (Regulation And Registration) Act, 2010 — Section 34

Citation : (2021) 08 JH CK 0021

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sameer Saurabh, Nehala Sharmin

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Sameer Saurabh, the learned counsel for the petitioner and Mrs. Nehala Sharmin, the learned counsel for the State.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has preferred this petition for quashing of the order dated 27.09.2018 passed in connection with Giridih (Muffasil), P.S. Case

No.426/2017, corresponding G.R.No.3627/2017 by which the application filed by the petitioner under section 457 of the Cr.P.C has been rejected. The

aforesaid case was instituted on the following premises:

The aforesaid case has been instituted on the basis of the direction of S.D.O, Giridih, by the Incharge Medical Primary Health Centre Sadar Block

Giridih, and the prosecution case in short is that the S.D.O in presence of Civil Surgeon Giridih conducted raid on seeks illegal nursing home and in

course of verification it has been found that those nursing homes were following the norms of Clinical Establishment (Regulation and Registration)

Act, 2010 and in those hospitals duly to the qualified doctors were not found and the expired medicine is being administered to the patient and

accordingly, all those nurshing homes were sealed and some persons of those nursing homes were apprehended for the purpose of verification. It has

been alleged that Shri Shashi Bhushan is operating the Verma Clinic, Sirsiya claiming himself paralysis expert and he also used to take contract for the

treatment. It has also been alleged that from this Clinic illegal contraceptive pills in some materials relating to prostitution were also recovered. It has

further been alleged that in none of the nursing homes biodegradable or non-biodegradable waste management were found and accordingly directed

the Civil Surgeon, Giridih to institute the FIR against the owners of those nursing homes and accordingly the informant has registered the instant FIR

only against the nursing homes including Verma Clinic, Sirsiya, Giridih.

4. Mr. Sameer Saurabh, the learned counsel appearing on behalf of the petitioner at the outset submits that the petitioner is not named in the F.I.R and

he has also not been charge-sheeted. The petitioner is the land owner of the premises situated at Mauza Sirsiya, Khata Noa.3 and 29 plot No.198 and

200 Thana No.44. According to him, the said premises was provided on lease rent to one Dr. Shashi Bhushan Prasad on 05.11.2003 for which a deed

of lease was entered into between the petitioner and Dr. Shashi Bhushan Prasad which is contained in Annexure-2. In the said premises Dr. Shashi

Bhushan Prasad was running a nursing home namely, Verma Clinic. On 10.12.2017 the S.D.M along with Civil Surgeon, Giridih raided the house of

the petitioner and sealed the same on 10.12.2017. It has been alleged by the authorities that the said Clinic was being run in absence of any licence

which is a condition precedent for running the nursing home in the light of Clinical Establishment (Regulation and Registration) Act, 2010. Mr. Sameer

Saurabh, the learned counsel for the petitioner submits that in the said Act, section 34 prescribes the power to enter. For the sake of brevity, section

34 of Clinical Establishment (Regulation and Registration) Act, 2010 is quoted hereinbelow:

34. Power to enter.- The authority or an officer authorized by it may, if there is any reason to suspect that anyone is carrying on a clinical

establishment without registration, enter and search in the manner prescribed, at any reasonable time and the clinical establishment, shall offer

reasonable facilities for inspection or inquiry and be entitled to be represented thereat:

Provided that no such person shall enter the clinical establishment without giving notice of his intention to do so.

5. The learned counsel for the petitioner submits that this Act came into force in the year 2010 whereas the premises in question was provided on

lease in the year 2003. He further draws the attention of the Court towards Jharkhand State Clinical Establishment Regulation Rules, 2013. By way of

drawing the attention of the Court towards the said Regulation particularly Rule-11 he submits that the procedure is prescribed to enter in the said

rules. By way of relying on this rules, he submits that it is condition precedent to provide notice to the said premises for entering into the premises in

question. He submits that Rule-11 has also not been followed. He submits that by the impugned order, the claim of the petitioner has been rejected

only on the ground that in the said premises without any valid licence the clinic was being run.

6. On the other hand, Mrs. Nehala Sharmin, the learned State counsel submits that in the said premises without any licence the clinic was being run

and that is why the authorities concerned has sealed the premises in question. She also relied on Rule 11 of the Rules, 2013 and submits that the

procedure is there. She submits that the premises was provided on rent illegally and that is why the authorities concerned have rightly sealed the

premises in question. According to her, there is no illegality in the impugned order.

7. On perusal of the impugned order dated 27.09.2018 passed by the learned SDJM in the said case, it transpires that the only ground of rejecting the

claim of the petitioner was that in the premises without any valid licence the clinic in question was being operated. The Court finds force in the

argument of Mr. Sameer Saurabh, the learned counsel appearing on behalf of the petitioner that the lease agreement was entered into in the year 2003

whereas the said Act has taken effect in the year 2010. At the time of entering into the agreement the said Act and the Rules were not in existence.

Moreover, the petitioner is not named in the F.I.R and the chargesheet has also not been submitted against the petitioner. The petitioner is only the

owner of the premises in question which is also clear from the lease deed annexed as Annexure-2. Annexure-3 is the document dated 14.09.2018

which was submitted in the Court of SDJM pursuant to the direction by the police officer, Muffasil P.S., Giridih wherein it has been informed that a

request was made to the SDJM about opening of the said premises but nothing has been communicated by the SDJM in that regard to the police

station. In the light of the Rule-11, it has a condition precedent for providing notice of his intention which has not been followed in the case in hand. In

the counter affidavit it has been admitted that the charge sheet has already been submitted against Dr. Shashi Bhushan Prasad.

8. In the light of the above facts and considering that procedure has not been followed while sealing the premises in question and the petitioner is not

named in the FIR and the charge sheet has also not been submitted against him and the Act has come into force in the year 2010 and the Rules in the

year 2013 and at the time of entering into the lease agreement which was in the year 2003, the said Act and the Rules were not in existence.

9. Accordingly, the impugned order dated 27.09.2018 is hereby quashed.

10. A direction is issued to unseal the premises in question with taking appropriate condition by the petitioner for unsealing of the said premises. The

SDJM is at liberty to put any condition for unsealing of the said premises in accordance with law.

11. With the above observation and direction, the instant petition [Cr.M.P. No. 1340 of 2019] stands allowed and disposed of.

12. I.A., if any, also stands disposed of.