
(2012) 12 PAT CK 0002
In the Patna High Court
Case No : Criminal Writ No. 1054 of 2011

Dasrath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(1), 23, 27(A), 3

Citation : (2013) 3 PLJR 422

Hon'ble Judges : Ashwani Kr. Singh, J

Bench : Single Bench

Advocate : Syed Ashfaq Ahmad, for the Appellant; Debanjan Choudhary for the State, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kr. Singh, J.—The petitioner Seeks quashing of the entire prosecution case including the order dated 15.1.2002 passed by the learned Chief Judicial Magistrate, Aurangabad, in Complaint Case No. G.O. 267 of 2001. By the impugned order, the learned Chief Judicial Magistrate, Aurangabad, has taken cognizance of the offence u/s 18(a)(1) of the Drugs and Cosmetics Act, 1940 (for short "the Act"). The petitioner is owner of the medicine shop, namely, M/s. Magadh Medical Hall, Barun, Aurangabad. The then Drug Inspector, Aurangabad, inspected the aforesaid medicine shop of the petitioner on 14.7.1999 and took sample of A.D. Vitamin Baby Oil, Batch No. G-125 of which, the manufacturing date was February, 1999 and the expiry date was January, 2001. The manufacturer of the Baby Oil was M/s Growmed Pharmaceutical. The sample of A.D. Vitamin Baby Oil was sent to the Government analyst, C.I.P.L, Ghaziabad (U.P.) in Form-13. The chemical examination report of the Government Analyst, C.I.P.L., Gaziabad dated 29.12.2000 shows that sample was of standard quality. However, the Government Analyst sent corrigendum on 20.2.2001 stating that the seized A.D. Vitamin Baby Oil was not of standard quality and on that basis the present prosecution has been launched against the petitioner and the

manufacturing company u/s 27(A) of the Act.

2. Learned counsel for the petitioner submits that the respondents failed in complying with the statutory procedure mentioned in Section 23 of the Act and, as such, the order taking cognizance is bad. He further submits that admittedly the second report dated 20.2.2001 was received beyond the expiry period and, as such, the valuable right of the petitioner to challenge the same was lost. It is contended that the quality of any drug or cosmetics as defined u/s 3 of the act can be guaranteed only upto the expiry period and no one vouch the sustainability and its standard beyond the expiry period. In support of his submission, he relied upon a decision of the Apex Court in the case of Medicamen Biotech Ltd. and Another Vs. Rubina Bose, Drug Inspector, . It has also been contended that on the grounds stated above, the cognizance taken against the manufacturing company has already been quashed by order dated 9.8.2010 passed in Cr.W.J.C. No. 295 of 2009 by a Bench of this court.

3. Learned counsel appearing on behalf of the State submits that, by mistake, the first report dated 29.12.2000 stated that the seized sample was of standard quality. However, subsequently, a corrigendum was issued on 20.2.2001. The order dated 9.8.2010 passed in Cr.W.J.C. No. 295 of 2009 by which the impugned order taking cognizance as against the manufacturer has been quashed by a Bench of this court, has been brought on record and marked as Annexure-5 to the present writ petition. I find that clear, cogent and convincing reasons have been given for allowing the writ petition filed on behalf of the manufacturer. The case of the petitioner, who is a petty shopkeeper, stands on identical footing to that of the manufacturer. Here it would be relevant to point out that the petitioner has brought on record the entire order-sheet of the court below by filing a supplementary affidavit which has been taken on record. It has been contended that till date not a single witness has been examined on be-half of the prosecution.

4. Since the order taking cognizance of the offence as against the manufacturer has already been quashed by a Bench of this court, I find no reason to take a different view of the matter. In the result, the impugned order taking cognizance dated 15.1.2002 and the entire criminal prosecution, so far as the petitioner is concerned, in connection with Complaint Case bearing G.O. No. 267 of 2001, pending in the Court of Chief Judicial Magistrate, Aurangabad, is hereby quashed. The writ petition stands allowed.