
(2006) 01 RAJ CK 0089

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 654 of 2005

Jyoti Gupta and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 18A, 27, 28

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 23, 8

Citation : (2006) FAJ 204

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Advocate : Manish Bhandari and Pankaj Gupta, for the Appellant; Arun Sharma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioners have challenged the order dated 24.5.2005 whereby the Chief Judicial Magistrate, Bharatpur has taken cognizance against the petitioners for offences under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 (henceforth to be referred to as "the Act", for short).

2. The brief facts of the case are that the petitioners, who are duly licensed by the Drug Controller, are carrying on the business of purchase and sale of Drugs and Medicines. On 17.3.2005 and 18.3.2005, an Inspection was carried out both by the Drug Inspector and by the police. While the police chalk out an formal FIR, FIR No. 66/2005, for offences under Sections 8/22 and 8/23 of the N.D.P.S. Act, the Drug Inspector filed a complaint for offences under Sections 27(b)(ii) and 28 of the Act. The petitioner No. 2, Rakesh Gupta had challenged the FIR by filing S.B. Cr. Misc. Petition No. 660/05. However, after a thorough investigation and during the pendency of the said petition, the police had submitted a Negative Final Report, which has been accepted by the learned Trial Court. Hence, that petition was dismissed as infructuous. Meanwhile, after the filing of the complaint, the learned Chief Judicial Magistrate has taken cognizance against

the petitioners as aforementioned. Hence, this petition before us.

3. Mr. Manish Bhandari, learned Counsel for the petitioners, has argued that the Drug Inspector, Mr. Anil Agarwal, had a personal animosity with the petitioners. Near relatives of Mr. Anil Agarwal were equally engaged in the business of selling Drugs and Medicines at Bharatpur. Thus, there was a business rivalry between the petitioners and his near relatives. In order to unnecessarily harass the petitioner, the said raid was carried out on 17.3.2005. During the course of this raid, the police had not only seized the licence, but had also seized the invoices and other documents relating to the Drugs and Medicines being sold by the petitioners. The documents so seized by the police were in the police custody. However, despite this fact, according to the complaint, the basic case against the petitioners is that they were running the business without having a proper licence and that they were not willing to disclose the name of the manufacturers. Hence, they violated Sections 18 and 18A of the Act. Thus, they were punishable under Sections 27(b)(ii) and 28 of the Act. According to the learned Counsel, the licence was already seized by the police and was in their custody. Therefore, the petitioners could not produce the licence when they were asked to do so by the Drug Inspector. Interestingly, the said licence was granted by Mr. Anil Agarwal himself. Moreover, the invoices and other documents were also with the police, therefore, they could not be produced before the Drug Inspector. Hence, a frivolous case has been made against the petitioners. Both the cognizance order and the continuation of the criminal proceeding, therefore, amount to an abuse of the process of the law and the Court.

4. On the other hand, Mr. Arun Sharma the learned Public Prosecutor, has supported the impugned order.

5. We have heard learned Counsel for the parties and perused the impugned order and examined the record before us.

6. A bare perusal of the record produced by the Investigating Agency clearly shows that a drug licence was issued to the petitioners on 11.6.2004 and was valid for a period of five years i.e. till 10.6.2009. The said drug licence was issued to M/s. Pooddar International, the proprietorship of which belonged to Mr. Rakesh Gupta, the petitioner No. 2. Similarly, a Certificate of Import and Export was also issued to the said Firm on 24.5.2004. These two documents were recovered by the police and were kept by the police. Therefore, when the Drug Inspector asked the petitioners to produce the licence, they could not do so as the police had already seized the documents. Furthermore, the invoices, which were seized by the police, clearly reveal the names of the Drug, names of the Manufacturer. Since, these invoices were also with the police, the petitioners could not produce the same before the Drug Inspector. Despite the fact that the petitioners had cogent reason for not producing these documents before the Drug Inspector, the Drug Inspector has filed a frivolous complaint against the petitioners. The learned Chief Judicial Magistrate has passed a cyclostyle cognizance order without application of judicious mind. Hence, the cognizance

order dated 24.5.2005 is unsustainable in the eyes of the law.

7. In the result, this petition is allowed and the cognizance order dated 24.5.2005 is quashed and set-aside.