
(2004) 05 JH CK 0064

In the Jharkhand High Court

Case No : Criminal M.P. No. 656 of 2003

Manfred Knoll and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 17A, 27A

Citation : (2004) 2 JCR 570

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : A. Sen, for the Appellant; A.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed against the order dated 3.12.2002 passed in Complaint Case No. 670/2002, T.R No. 821/2003, whereby cognizance for an offence under Sections 27A read with Section 17A of the Drugs and Cosmetics Act has been taken against the petitioners.

2. Facts giving rise to the filing of this application are that opposite party No. 2- Gopal Krishna Kedia (hereinafter referred to as "the complainant"), filed a complaint case against the petitioners being Complaint Case No. 670/2002 corresponding to T.R. No. 821/2003 stating therein that he purchased two ampules of injection syntocinon Batch No. 07025-G from the Rahul Medical, Giridih and handed over it to the nurse of the Nursing Home. The nurse, while administering the injection upon the patient namely, Smt. Chanchal Agarwal, found some foreign element in the ampule and informed about the same to the complainant. The nurse handed over the sample to the complainant and he later on sent notice to the company and the company in turn informed the complainant that the representatives are begin sent to look into the matter but ultimately when they did not turn up reminders were sent and he was informed

over phone that the matter is being enquired into and when nothing was done then complaint petition was filed (Annexure 1). Two witnesses were examined in enquiry u/s 202, Cr PC and on the basis of materials available on record, the learned Magistrate took cognizance in the case.

3. The contention of the learned counsel for the petitioners is that the person, who has filed the complaint petition, is not an aggrieved person and, therefore, he cannot file any complaint petition. Another point has been taken is that petitioners are nowhere related to the offence in any way and they are not responsible, as they did not look after day-to-day work of the company. The other point is that the proprietor, partner and owner of Rahul Medical has not been made an accused in this case, which is serious lapse on the part of the complainant and the nurse in question, who pointed that there is foreign element in the ampule, has not been examined in this case nor patient has been examined u/s 202, Cr PC. Further there is no report of the Government analyst as provided u/s 26 of the Act. Further Drugs in question are Schedule H drugs, which are sold only on the prescription of a registered Medical practitioner and in this case no such prescription has been produced. It was further pointed out that Section 27A deals with cosmetics and not drugs because as per the Act, drugs and cosmetics are two separate items.

4. Opposite party-complainant appeared and filed a counter-affidavit and from perusal of counter-affidavit it appears that it has been claimed that all the procedures have been followed for filing a proper complaint. The learned counsel for opposite party-complainant submitted that the opposite party-complainant is an aggrieved person in view of the fact that he happens to be mausa of the patient and there is none to look after the patient and he looks after the patient. He referred to Section 26 of the Act and submitted that as per Section 26 of the Act opposite party complainant is an aggrieved person and entitled to file an application. Section 26 of the Drugs and Cosmetics Act is quoted herein below :--

"26. Purchaser of drug or cosmetic enabled to obtain test or analysis-Any person or any recognized consumer association, whether such person is a member of that association or not shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government analyst any drug or cosmetic purchased by him or it and to receive a report of such test or analysis signed by the Government analyst."

5. Thus, from perusal of section itself, it appears that opposite party-complainant is an aggrieved person and is entitled to file a complaint.

6. The point, that proprietor, partner and owner of Rahul Medical has not been made as an accused and further that nurse in question who pointed that there is foreign element in the ampule, has not been examined u/s 202, Cr PC in the inquiry, are such points which can be taken at the stage of trial.

7. Another point that has been raised is that the proper procedure for filing complaint has not been followed. In this connection, it was pointed out on behalf

of the petitioner that report of the Government analyst has not been properly obtained. It appears from para-17 of the counter-affidavit that patient was admitted in the hospital on 11.10.2000 and case was filed on 7.6.2002 and till then, the ampule was not sent for test of the Government analyst and after filing of the complaint case, it appears from para-17 of the counter-affidavit, the Court verbally directed the petitioner to get the ampule analysis done from a recognized analyst as according to the Act, a report should be obtained from the Government analyst and thereafter the ampule was sent for test of the analyst on 13.6.2002 after a lapse of about more than one and half years. Section 26 itself speaks that any person shall file an application in the prescribed manner and on payment of prescribed fee to entitle to submit for test or analysis to a Government analyst any drug or cosmetics purchased by him and to receive a report of such test or analysis signed by Government analyst.

8. According to Section 20 of the Act, the State Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government analysts for such areas in the State and in respect of such drugs or classes of drugs or such cosmetics or classes of cosmetics as may be specified in the notification.

9. It is nowhere mentioned in the counter-affidavit nor learned counsel for the opposite party-complainant pointed out that this is the place from where report of analyst was obtained or person was a Government analyst or not, as according to Section 20, a report has to be obtained from a person appointed as Government analyst. But in the instant case no such fact has come to the knowledge. Further, ampule was purchased on 15.11.2000 and it was sent for analysis in the month of June 2002 and it has not come on record as to where ampule was kept from the date of purchase till the ampule was sent for analysis. In that view of the matter, I find no case is made out against the petitioner and continuance of the case will amount to abuse of the process of the Court.

10. In the result, this application is allowed and order taking cognizance dated 3.12.2002 is quashed.