

(2006) 03 PAT CK 0023

In the Patna High Court

Case No : Criminal W.J.C. No. 842 of 2005

Manju Kumari and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 94
Drugs (Control) Act, 1950 — Section 13(1)
Drugs and Cosmetics Act, 1940 — Section 13(1), 13G, 21, 22, 22(2)
Penal Code, 1860 (IPC) — Section 120B, 307, 420, 467, 468

Citation : (2006) CriLJ 3014 : (2006) 2 PLJR 549 : (2006) 4 RCR(Criminal) 660

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : R.S. Pradhan, Garjanan Arun and D.N. Mishra, for the Appellant;
S.D. Yadav, G.A., for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioners and the State.

2. Present writ application has been filed by the petitioners for quashing the first information report of Kadamkuan P. S. Case No. 716 of 2005 corresponding to G. R. No. 3911 of 2005 registered under Sections 307, 467, 468, 471, 420 and 120B of the Indian Penal Code read with Sections 9, 9A, 9B, 9C and 9D, 13(1) (a), (b) and (c), 27(a)(b), (c) and (d), 27A and 28B of the Drugs and Cosmetics Act, 1940, and 13(1) of the Drugs (Control) Act, 1950. Further prayer of the petitioners is for direction to release the seized articles, such as manufactured medicines etc. seized by the Officer-in-Charge, Kadamkuan Police Station on 2-9-2005 from the factory premises of the petitioners.

3. On 1-9-2005 Officer-in-Charge of Kadamkuan Police Station in course of raid of some other factory premises manufacturing drugs, came to know about manufacturing of drugs at petitioners' premises and when petitioner No. 2 was absent from his factory premises a raid was conducted by the Officer-in-Charge

of Kadamkuan Police Station. In course of raid several articles and medicines were seized. On the next date along with the Drugs Inspectors again factory premises of the petitioners was inspected and on the basis of self statement of the Officer-in-Charge of Kadamkuan Police Station first information report was drawn and registered bearing Kadamkuan P. S. Case No. 716 of 2005.

4. In the first information report it has been alleged that when the informant, Ramakant Prasad, Inspector of Police-cum-Officer-in-Charge of Kadamkuan Police Station was raiding some other factory In Rajendra Nagar, Patna, he received a secret information that in M/s. Mammals Drugs. Rajendra Nagar, Road No. 1, Patna, fake and misbranded medicines are being manufactured. Informant visited the premises of M/s. Mammals Drugs, persons who were working there fled away, thereafter, the Drugs Inspectors were called, in their presence, premises was inspected and seizure list was prepared. In course of raid it was found that medicines of different brands were being prepared and packed illegally. Manufacturing licence was not fixed at any place or in front of the factory, the manufacturing work was being done in unhealthy manner with an intention to cheat the customers which is dangerous for human life and a cognizable offence. Articles and medicines were seized.

5. Petitioners have challenged such seizure, institution of first information report as well as investigation of the case by the police officer on the ground that it is in complete violation of Section 32 of the Drugs and Cosmetics Act, 1940. Since the institution of the case is itself illegal and without jurisdiction, no investigation should proceed not any charge-sheet should have been submitted u/s 173 of the Criminal Procedure Code.

6. Section 32 of the Drugs and Cosmetics Act, 1940, reads "No prosecution under this Chapter shall be instituted except by an Inspector (or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not)". Inspector has been defined u/s 3(e) of the Act:

3(e) Inspector Means : (i) in relation to Ayurvedic, Siddha or Unani drug, an inspector appointed by the Central Government or State Government u/s 13G and (11) in relation to other drug or cosmetic an Inspector appointed by the Central Government or State Government u/s 21.

7. Since in the present case drugs manufactured at the petitioners' premises was neither Ayurvedic, Siddha or Unani, the Inspector means, an Inspector appointed by the Central or State Government u/s 21 of the Act. Section 22 of the Act. enumerates the power exercised by the Inspectors.

22(1). Subject to the provisions of Section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed-

(a) inspect -

(i) Any premises wherein any drug or cosmetic is being manufactured and the means, employed for standardizing and testing the drug or cosmetic.

(ii) Any premises wherein any drug or cosmetic is being sold or stocked or exhibited, or offered for sale, or distributed.

(b) Take samples or any drug or

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed.

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee.

(c) At all reasonable times, with such assistance, if any, as he considers necessary-

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed: or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed,

and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence.

(cc) examine any record, register, document or any other material object found (with any person or any place, vehicle, vessel or other conveyance referred to in Clause (c)), and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;

(cca) require any person to produce any record, register, or other documents relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

(2) The provisions of (the Code of Criminal Procedure, 1973 (2 of 1974)) shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under (section 94) of the said Code.

((2A) Every record, register or other document seized under Clause (cc) or produced under Clause (cca) shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.]

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter (or refuses to produce any record, register or other document when so required under Clause (cca) of Sub-section (1)), he shall be punishable with imprisonment which may extend to three years, or with fine, or with both)

8. Counsel for the petitioner has submitted that so far the present case is concerned, the prosecution has been initiated by the Inspector of Police, who is not authorised u/s 22 of the Act to inspect, search, seize and institute a case under the Drugs and Cosmetics Act. The case can be instituted only by an Inspector who has been appointed u/s 21 of the Act and who is vested with a power to make search and seizure as well as investigate the case u/s 22 of the Act unless a prosecution has been instituted by an Inspector or by a person aggrieved or by recognized consumer Association or it's member, no Court can take cognizance of an offence u/s 32 of the Act. It has also been submitted that search and seizure was made without any search warrant issued under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) which is mandatory u/s 22(2) of the Drugs and Cosmetics Act, 1940. It has been submitted that since illegality committed by the respondents has gone into the root of the case making entire criminal proceeding illegal and without jurisdiction, as such, the first information report and entire criminal proceeding should be quashed.

9. Counter affidavit has been filed on behalf of the Senior Superintendent of Police, Patna, admitting that in course of raid at other premises information was received regarding illegal manufacturing of drugs in the premises of M/s. Mammals Drugs at Rajendra Nagar, Road No. 1, Patna. The Officer-in-Charge of Kadamkuan Police Station was directed to conduct a raid at the manufacturing premises of M/s. Mammals Drugs. He informed the members of the team of Drugs Inspector, they also reached there and inspection was made in presence of the Drugs Inspectors and found that in a most unhealthy and unhygienic manner as well as in the low standard, the medicines were being illegally manufactured. In the counter affidavit it has been emphasised that before conducting raid three members team of medicine Inspectors were called and in their presence search and seizure was made. They also signed search and seizure list. Since the raid

was conducted in presence of the Drugs Inspectors and they sent the samples of medicine for analysis, there is no illegality in search and seizure or institution of the case. However, nowhere in the counter affidavit it has been stated that the search and seizure was made by the Drugs Inspector after obtaining search warrant as provided u/s 22(2) of the Drugs and Cosmetics Act, 1940. Section 22(2) of the Drugs and Cosmetics Act, 1940, provides that the provisions of Criminal Procedure Code shall apply to any search and seizure as they apply to any search and seizure made under the authority or warrant issued u/s 94 of the Code. Even if it is accepted that in presence of the Drugs Inspectors search and seizure was made, there is nothing to show that only after obtaining search warrant the search and seizure was made. Since provision is mandatory, this itself has made the search and seizure on the part of the informant as well as the raiding party illegal.

10. In this case, no counter affidavit has been filed on behalf of the Drugs Inspector to substantiate this fact that actually they have participated in the raid as well as search and seizure was made in their presence as provided u/s 22(2) of the Drugs and Cosmetics Act, 1940. Admittedly the case has been instituted by a police official although u/s 32 of the Drugs and Cosmetics Act he has got no jurisdiction to institute a case under the Drugs and Cosmetics Act.

11. Since, in the present case everything has been done by the informant in violation of Section 32 of the Drugs and Cosmetics Act, 1940, as well as Section 22(2) of the Act, it is difficult to accept the contention of the counsel for the State that there is no illegality and no reason for quashing the first information report as well as the entire criminal proceeding.

12. Counsel for the petitioner has placed reliance on a decision reported in 1997 (1) BLJR 899 (Hindustan Liver Ltd. v. The State of Bihar and Ors.) wherein it has been held "that in my opinion the prosecution can be instituted by filing a complaint by the Drugs Inspector and the police has no jurisdiction to register a first information report and investigate into the offence under Act. The investigation by the police is, therefore, without jurisdiction and is liable to be quashed.

13. Petitioner's counsel has also stated that the samples of the drugs which were collected during the search and seizure were sent to the Bihar Drugs Control Laboratory, Government of Bihar, for analysis and report. The report of the Bihar Drugs Control Laboratory has submitted its report vide letter No. 202, dated 28-9-2005 and it has been reported that samples of the manufactured drugs were found to be up to the mark and as per the limit laid down in Schedule I of the Drugs and Cosmetics Act and Rules. In this view of the matter, the allegation made in the first information report u/s 9 misbranded drugs, 9A adulterated drugs, 9B spurious drugs, 9D misbranded cosmetics, has no legs to stand. Regarding the expired medicines, which were seized by the informant on the date of the occurrence, it has been submitted by the petitioners' counsel that these were the medicines which were returned goods from the stockist M/s.

Laxmi Medico and as per law these medicines were to be destroyed within six months of its return. The raid was conducted prior to the expiry of that period and before the steps could have been taken for destroying the medicines.

14. In view of the discussions, made above, and considering the provisions of law, investigation by the police on the basis of the first information report as well as submission of the charge-sheet, in the present case, is wholly illegal and without jurisdiction.

15. Accordingly, entire prosecution of Kadamkuan P. S. Case No. 716 of 2005 corresponding to G. R. No. 3911 of 2005, so far it relates to the petitioners, are quashed.

16. This application is allowed.