
(1990) 03 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No. 4432 of 1989

Raghunath Bhagat and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 27, 32, 32(1)
Penal Code, 1860 (IPC) — Section 420

Citation : (1990) 38 BLJR 1299 : (1991) CriLJ 2054

Hon'ble Judges : Phani Bhushan Prasad, J

Bench : Single Bench

Advocate : T.K. Jha and Madan Mohan No. 1, for the Appellant; Damodar Prasad Tiwary, for the Respondent

Final Decision : Dismissed

Judgement

Phani Bhushan Prasad, J.—In this application u/s 482 of the Code of Criminal Procedure, both the petitioners have prayed for quashing of the order dated 3-1-89 passed by the Chief Judicial Magistrate, Munger, by which cognizance has been taken against them u/s 420 of the IPC and 27 of the Drugs and Cosmetics Act, 1940, and the case has been transferred to the file of Shri B.C. Jha, Judicial Magistrate, 1st Class, Munger, for trial vide G. R. No. 1543/88.

2. Prosecution case, in brief is that Opposite party No. 2 lodged a written report on 30-9-88 at Kotwali Police Station, Munger, alleging therein that his son Anand Raj Verma, two year old boy, was suffering from some disease and was under the treatment of Dr. Janardan Prasad of Mohalla Barabazar, Munger, on the advice of the said doctor, the informant Opposite party No. 2 purchased one vial of Ampicillin of 100 M.G. Potency from the shop of Jagannath Bhagat which is known as Bhagar Pharmacy. The aforesaid medicine was injected to the son of the informant but there was no improvement in his condition. The informant found that on the container of the vial, the date of expiry of the medicine was

mentioned as "1988 August". The informant showed it to his physician, who after seeing the expiry date of the vial as mentioned on its container, observed that the validity date of the said medicine had expired and, therefore, it could not produce the desired effect. Further case of the informant is that on 30-9-88 he again went to the said Bhagat Pharmacy along with his father and brother and asked for four vials of Ampicillin of 100 M. G. Potency and found that on all the vial the expiry date was mentioned as August, 1988. The informant pointed it out to the Sales Man and enquired from him as to why he was selling the medicine of expired date on which the sales man started quarreling with him and did not grant him any receipt. Thereafter the informant took the four vials of the Ampicillin to the Police station and submitted a written report, on the basis of which formal FIR was drawn and a case u/s 420, IPC and Section 27 of the Drugs and Cosmetics Act was instituted.

3. On behalf of the petitioners, argument has been advanced that in absence of any receipt showing purchase of the medicine from the shop of the petitioners, no case u/s 420, IPC and Section 27 of the Drugs and Cosmetics Act is made out. He further contended that there is complete absence of any mens rea on the part of the petitioners and no case is made out against them as there is no reliable material on the record to show that the said medicine was sold by the petitioners to the informant. It has been further argued that according to Section 32 of the Drugs and Cosmetics Act, no prosecution can be launched except on a complaint filed by a Drug Inspector. In the instant case, admittedly the complaint has not been filed by the Drug Inspector, and as such according to learned counsel for the petitioners. Cognizance against the petitioners is bad and the order taking cognizance is fit to be set aside.

4. Learned State Counsel has resisted this application and contended that the point of law agitated by the learned counsel for the petitioner that no prosecution can be launched except on the complaint filed by the Drugs Inspector, is the only point to be considered in this case. He further contended that so far other points raised by the learned counsel for the petitioners are questions of facts and that can only be decided at the trial. In course of argument learned state counsel has drawn my attention to Section 32 of the Drugs and Cosmetics Act and contended that there has been amendment in this section and now provision has been made in Section 32(1) of the Drugs and Cosmetics Act that complaint can be filed by the aggrieved person also.

5. After hearing learned counsel for the parties, it appears that only point which is to be considered at this stage is whether cognizance can be taken on a complaint filed by an aggrieved person.

6. Section 32(1) of the Drugs and Cosmetics Act runs as follows :--

"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)".

It appears that there has been some amendment in the aforesaid Section and now the aggrieved person can also file a complaint on which cognizance can be taken.

7. In view of clear provision in Section 32(1) of the Drugs and Cosmetics Act, there is no merit in the contention of the learned counsel for the petitioners that as the complaint has not been filed by Drugs Inspector, cognizance against the petitioners is bad.

8. On careful consideration of submission of learned counsel for the parties and on going through Section 32(1) of the Drugs and Cosmetics Act, it appears that no illegality has been committed by the court below in taking cognizance against the petitioners. No case of quashing is made out.

9. In the result, this application fails and is hereby dismissed.