

(2015) 07 AHC CK 0191

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 16965 of 2015

Rajesh Tyagi and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Drugs and Cosmetics Act, 1940 — Section 18, 21(1)C, 22(2), 27, 32
Penal Code, 1860 (IPC) — Section 274, 275, 276, 419, 420

Citation : (2015) 8 ADJ 189 : (2016) 2 ALJ 79 : (2015) 91 ALLCC 178 : (2016) CriLJ 1311

Hon'ble Judges : Sudhir Agarwal, J;B.K. Srivastava-II, J

Bench : Division Bench

Advocate : Akhilesh Chandra Shukla, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and perused the record. By means of present writ petition, petitioners are seeking quashing of the First Information Report dated 27.6.2015, registered as Case Crime No. 206 of 2015, under Sections 419, 420, 274, 275, 276 I.P.C. and 18/27 Drugs and Cosmetics Act, Police Station Hapur Dehat, District Hapur.

2. Aforesaid FIR has been got lodged by Drug Inspector, District Hapur against petitioners for the reason that on 17.3.2015 a raid was conducted in petitioner's company namely M/s. Unimex Pharmaceutical and in the said Firm apart from Ayurvedic Drugs 10 Alopatic Medicines were stored in the name of M/s. Perfect Lab Pvt. Ltd., Meerut Road, Asaura near Dheerakhera Industrial Area, Hapur bearing Licence No. 2 of 2010 and 3SC/P of 2010, but no sale purchase documents could not be shown by petitioner No. 2 who is brother of petitioner No. 1-manufacturer and distributor. All those medicines, therefore, were seized on Form 15, under Section 21(1)C of Drugs and Cosmetics Act and were handed over to petitioner No. 2. Total 11 samples were also taken of all 10 medicines on

Form 17 and 17 A and receipts were also given to him.

3. On 26.6.2015 in pursuance of order of Assistant Commissioner, Drug, Meerut Division, Meerut, the respondent No. 3 alongwith other authorities reached at the petitioners' Firm namely Unimax Pharmaceutical for inspector, but despite information no one turned up, then, lock of the Firm was broken and all 10 medicines which were seized on 17.3.2015 were found missing from the place and compound was found empty. All aforesaid medicines being found of substandard and misprinted, therefore, FIR in question has been lodged against petitioners.

4. From a perusal of First Information Report and taking the allegations contained therein to be true, it cannot be said that commission of a cognizable offence is not made out. Despite repeated query, learned counsel for the petitioners also could not show that no offence whatsoever has been made out in the aforesaid First Information Report. Therefore, question of its quashing in the limited scope of judicial review in writ petition under Article 226 of the Constitution does not arise.

5. Learned counsel for petitioners, at this stage, stated that even if the F.I.R. has not to be quashed and the writ petition has to be dismissed, this Court may pass an interim order protecting the petitioner from arrest. He has also relied upon a judgment passed by Patna, High Court in Manju Kumari and Another Vs. State of Bihar and Others, (2006) CriLJ 3014 : (2006) 2 PLJR 549 , a case which was allowed and entire prosecution was quashed. In the said judgment following observations have been made in para 10, 11 and 12 of the said judgment:

"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 under Section 22(2) of the Drugs and Cosmetics Act, 1940. Admittedly the case has been instituted by a police official although under Section 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 in Hindustan Liver Ltd. v. The State of Bihar and others, 1997 (1) BLJ 899, 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."

6. The submission is thoroughly misconceived. The relied upon judgment has no application to the present case and is distinguishable. In the said case, the Drug Inspector has not participated in the raid and it was made by police officials. However, here the case is different. Learned counsel for petitioners could not plead that in this case, there has been committed same illegality and infirmity by the respondent authorities as was done in the case of Manju Kumar and another v. State of Bihar and others (supra).

7. Once the writ petition is dismissed, this Court has no power to pass any order in the nature of interim or interlocutory order. The Apex Court has deprecated such practice and has held, if final relief has been declined, no interim relief/ interim order should be granted to petitioners. The first such case is *The State of Orissa Vs. Madan Gopal Rungta*, AIR 1952 SC 12 : (1952) 18 CLT 45 : (1952) 1 SCR 28 . Therein High Court declined to grant final relief on the ground that there was an alternative remedy available to petitioner and, therefore, dismissed the writ petition relegating petitioner to avail alternative remedy, but then observing that before filing suit, 60 days notice under Section 80 C.P.C. will have to be given, which will take some time, an interim relief was granted. Deprecating this, Apex Court said that grant of relief under Article 226 is founded only on its decision that a right of the aggrieved party has been infringed. Therefore, existence of right is foundation of exercise of jurisdiction under Article 226. When the Court has decided nothing at all in respect to rights of parties, it would not be justified to grant any relief, final or interim, as the case may be, since Article 226 does not confer such jurisdiction. In para 6 of the judgment, the Court said:

"In our opinion, article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under article 226 of the Constitution. In our opinion, the language of article 226 does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld."

8. The aforesaid dictum has been followed in *Amarsarjit Singh Vs. The State of Punjab*, AIR 1962 SC 1305 : (1962) 3 SCR 346 Supp , *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*, AIR 1983 SC 1272 : (1984) 55 CompCas 423 : (1983) 3 CompLJ 171 : (1983) 2 SCALE 324 : (1983) 4 SCC 625 : (1983) 3 SCR 962 and recently in *Km. Hema Mishra Vs. State of U.P. and Others*, AIR 2014 SC 1066 : (2014) AIRSCW 624 : (2014) CriLJ 1107 : (2014) 2 JT 26 : (2014) 1 SCALE 342 : (2014) 4 SCC 453 .

9. In view thereof, we have no hesitation in observing that the prayer for quashing the F.I.R. if is declined on the ground that allegations contained therein discloses cognizable offence, therefore, no interference is called for at this stage, this Court would not be justified in granting any relief as an interim order by staying arrest since it will amount to grant a relief to the petitioners without deciding their right in any manner and this would be against the exposition of law settled by Apex Court in the aforesaid decisions.

10. Even otherwise, at this stage, this Court is not examining legality or otherwise of arrest made by police, since neither any one has been arrested nor this writ petition as such has been filed with a complaint that police or investigating officer has committed violation of any provision pertaining to arrest of any person or the petitioners themselves. The main relief in the writ petition is for quashing of First Information Report which, admittedly having disclosed commission of cognizable offence is not liable to be interfered with at this stage.

11. In view of above, no interference is called for. The writ petition is dismissed.