

(2001) 08 DEL CK 0114

In the Delhi High Court

Case No : In Criminal Rev. No. 482 of 2001 and Criminal M. No. 892 of 2001

Sh. Narender Mann

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Copyright Act, 1957 — Section 63

Criminal Procedure Code, 1973 (CrPC) — Section 167, 397, 401, 439, 482

Drugs and Cosmetics Act, 1940 — Section 17B, 27, 27A

Penal Code, 1860 (IPC) — Section 420, 468, 471

Trade and Merchandise Marks Act, 1958 — Section 78, 79

Citation : (2002) CriLJ 823 : (2001) 94 DLT 107 : (2002) 1 RCR(Criminal) 203

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Mr. D.C. Mathur and Mr. Mohit Mathur, for the Appellant; Mr. Pawan Sharma, Mr. S.C. Jain and Mr. V.K. Jain, for the Respondent

Judgement

S.K. Agarwal, J.—This petition u/s 397/401/439 read with Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") and Article 227 of the Constitution of India, is directed against the order dated 18th August, 2001 passed by the Court of Shri. J.P. Narain, Metropolitan Magistrate, Delhi dismissing application of the Investigating Officer, for police custody remand of Divya Gupta, the accused (respondent No. 2) and ordering his release on bail, in the case FIR No. 225/2001, P.S. Geeta Colony; Delhi u/s 63 of the Copyright Act, Section 78/79 of the Trade and Merchandise Marks Act, Section 27 of the Drugs And Cosmetics Act (for short "DAC Act") and Sections 420/468/571 of the IPC.

2. I have heard learned counsel for the parties and have been taken through the record.

3. On 17th August, 2001, respondent No. 2 Divya Gupta was arrested by the police; huge quantity of spurious drugs were recovered from his car and from his residence at Rohini. On 18th August, 2001, he was produced before the Court.

The Investigating Officer made an application praying for his police custody remand for ten days, on the grounds that other persons involved in the racket were yet to be arrested; the other godowns where the accused used to store the medicines are to be located and searched; the printers where he used to get the labels printed and the manufacturers of spurious medicines are yet to be traced and interrogated. Learned trial court dismissed the application observing that at this stage, it cannot be said whether recovered medicines were spurious or not, as the same have not been Chemically examined in any laboratory; the alleged recovery has already taken place; the accused in his disclosure statement has stated that he was not aware of the addresses of Suresh Mehra and Pawan, who used to meet him behind Red Fort, Therefore, the question of arresting the other accused persons, at the instance of accused, did not arise.

4. Learned counsel for petitioner, at the outset, placing reliance upon *Budh Singh v. State of Punjab*, 2001 V AD (S.C.) 597 argued that the nature of custody of the accused can be altered from judicial custody to police custody or vice versa, during the period of first fifteen days. The matter is of an urgent nature and should be decided immediately. He argued that statements of the officers of the compliant company were recorded on the same day, who have stated that the drugs recovered from the accused were not manufactured by their company, thus, the same would be deemed to be spurious in law and that the spurious drugs recovered from the accused were life saving drugs and, Therefore, police custody remand ought to have been allowed. Learned APP for State while supporting learned counsel for petitioner argued that the accused is no longer in "custody" and the limitation of fifteen days would not apply.

5. Learned counsel for the accused, on the other hand, argued that the impugned order declining police custody remand and granting bail is an interlocutory order and the petition by the complainant challenging the same is not maintainable. I am unable to agree. It is a petition for cancellation of bail. In any case, inherent powers of this Court can always be exercised to secure the ends of justice.

6. On merits, it was argued that the impugned order is perfectly legal and valid and no interference is called for at this state. Section 17B of the DAC Act defines the spurious drugs. It provides that a drug shall be deemed to be spurious if it is manufactured under the name which belongs to another drug, or if it is an imitation, or is a substitute for another drug, or if the label or the container bears the name of an individual or the company purporting to be the manufacturer of the drug, which individual or the company is fictitious or does not exist; or if it has been substituted wholly or in part by another drug or substance; or if it purports to be the product of a manufacturer of whom it is not truly a product. Section 17B of the DAC Act reads as under:-

"17B. Spurious drugs.- For the purposes of this Chapter, a drug shall be deemed to be spurious.-

- (a) if it is manufactured under a name which belongs to another drug; or
- (b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or
- (d) if it has been substituted wholly or in part by another drug or substance; or
- (e) if it purports to be the product of a manufacturer of whom it is not truly a product."

7. The definition of the "spurious drugs" provided under the DAC Act is very wide. In view of the above definition for the drug to be spurious, it is not necessary that it should be first subjected to any Chemical examination. It would be deemed to be a spurious drug if any of the above clauses are satisfied. In this case, as per the allegation, it purports to be the product of a manufacturer of whom it is not truly a product. Thus, learned Magistrate while declining police custody remand fell into the basic error, that there is no material to indicate that the drugs recovered from the accused are spurious drugs.

8. Section 27A of the DAC Act provides that the persons found guilty for the manufacture, sale and etc. of the adulterated and spurious drugs shall be liable to be punished with imprisonment for a term which shall not be less than five years and which may extend to a term of life with fine which shall not be less than rupees ten thousand. It reads as under:-

"27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.- Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes.

(a) any drug deemed to be adulterated u/s 17A or spurious u/s 17B or which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of S. 320 of the Indian Penal Code, solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees."

(b) xxx xxx

(c) xxx xxx (d) xxx xxx

9. To re-call the facts, the accused in this case in his disclosure statement, during investigation, stated that the drugs in question were given to him by one Suresh Mehra and Pawan and that they used to meet him behind Red Fort and he is not aware of the addresses of those persons. The stand taken by the accused in his bail application stands contradicted by his statement before the police. Looking into the nature and gravity of offence and the disclosure statement of the accused, in my considered view, a case of custodial interrogation of the accused Divya Gupta was clearly made out and the impugned order declining police custody remand is not sustainable and is hereby set aside. It is needless to mention that the offences under the DAC Act are grave and serious. Investigating agency ought to be given enough time to trace out the manufacturers of such spurious drugs in the larger interest of the society. I also find force in the argument of learned APP for State that limitation of fifteen days provided u/s 167 Cr.P.C. for change from judicial custody to police custody or vice versa would apply only when the accused is in custody, and not otherwise. The accused shall be deeded to be in custody from the date he surrenders before the Court.

10. For the foregoing reasons, impugned order dated 18th August, 2001, dismissing the application of the Investigating Officer and releasing respondent No. 2 accused on bail is hereby set aside. The parties are directed to appear before the concerned Court on 31st August, 2001 at 2 P.M. The Court shall allow police custody remand of the accused to the Investigating Officer in accordance with law.

11. It is clarified that after the police remand is over, the court would consider the bail application of the accused independently on merits uninfluenced by any observations made herein.

12. Petition stand disposed of.

13. Copy of the order be given dusty to both the parties, immediately.