

(2016) 11 RAJ CK 0056

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 735 of 2016

Shri Avadhesh Sharma

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

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

Drugs and Cosmetics Act, 1940 — Section 32

Penal Code, 1860 (IPC) — Section 420, Section 487

Citation : (2017) 2 CriCC 167 : (2017) 2 CriLR 550 : (2017) 1 RajCriC 1 :
(2017) 1 WLC 473

Hon'ble Judges : Mr. Vijay Kumar Vyas, J.

Bench : Single Bench

Advocate : Mr. Vipin Sharma, Advocate, for the Petitioners; Mr. N.S. Shekhawat, Public Prosecutor, for the Respondent

Final Decision : Disposed off

Judgement

Mr. Vijay Kumar Vyas, J. - The revision has arisen out of order dated 11.03.2016 passed by learned Sessions Judge, Jaipur Metropolitan Jaipur in Sessions Case No. 45/2016 whereby he has directed to frame charges under different sections of Drugs and Cosmetics Act, 1940 (hereinafter to be referred as Act of 1940) along with Section 420 and 487 of the IPC.

2. In brief, facts of the case necessary for deciding of this matter, are that on 03.11.2015 Shri Vachan Singh Meena, Drug Control Officer, Jaipur submitted a written complaint before SHO Police Station Shipra Path, Mansarovar, Jaipur to the effect that on 02.11.2015 on the directions of Drug Controller, he along with other officials went on the premises of M/s Assent Pharmaceuticals Distributors and Osheen Auganics situated near Durgapura Railway Station, Durgapura for inspection. He conducted the inspection as per rule and collected samples on suspecting the drugs to be spurious etc. and concluded that the petitioner is manufacturing and possessing for sale spurious drugs and he has committed

offences of Indian Penal Code and the Act of 1940. On this complaint, SHO registered FIR No. 718/2015, conducted an investigation and submitted a charge sheet against the petitioner before Magistrate of the jurisdiction who, in turn committed the same to the District and Sessions Judge, Jaipur Metropolitan, Jaipur.

3. Learned counsel for the petitioner submits that as per Section 32 of the Act of 1940, cognizance for offences punishable under the Act can be taken on prosecution instituted by a Drug Inspector or any gazetted officer authorised in this behalf of Central or State Government or the person aggrieved or by a recognised consumer association. As per this provision, police has not been authorised to institute the prosecution for such offences. The cognizance taken on a charge sheet filed by police, after investigation under Section 173 Cr.P.C., is bad in law and such cognizance is liable to be quashed. In support, he has cited a judgment dated 10.10.2016 passed by Bombay High Court Bench at Aurangabad in Criminal Writ Petition No. 846 of 2016, Rajendra v. The State of Maharashtra and Anr.

Learned Public Prosecutor opposed the petition.

4. I have given thoughtful consideration to rival submissions and gone through the material made available on record.

5. On perusal of impugned order, it reveals that before the learned trial court the petitioner was very much represented by an advocate and after hearing the arguments of both the parties, the impugned order has been passed. It does not reveal from this order that the point raised before this court was also raised before learned trial court. It appears that for the first time the plea regarding illegality in taking cognizance on basis of charge sheet filed by police has been taken, while pursuing the matter before this court. Therefore, it deems prudent and proper that petitioner be directed to raise the issue before learned trial court and let the trial court pass an appropriate order thereupon.

6. Thus, the impugned order dated 11.03.2016 is set aside and learned trial court is directed to rehear the petitioner and pass a fresh order with regard to framing of the charge.

7. The petition be treated as disposed of accordingly.

8. Since the main petition has been disposed of today, the stay application shall stand disposed of.