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**(1983) 12 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 245/83

Sumit Lal C. Shah and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 16-12-1983

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 482  
Drugs and Cosmetics Act, 1940 — Section 18, 32

**Citation :** (1983) WLN 446

**Hon'ble Judges :** Shyam Sunder Byas, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.S. Vyas, J.—By this petition, u/s 482 of the Cr. PC, the accused petitioners have challenged the order of the learned Chief Judicial Magistrate, Bikaner dated May 18, 1980 by which cognizance against them & some other persons was taken for offences punishable u/s 18/32 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act") and the Rules made thereunder, It was prayed that as the cognizance was wrongly taken, the aforesaid order be set aside and the proceedings taken there-under be quashed.

2. The Drugs Inspector, Bikaner submitted a complaint against the eight accused-petitioners and six others in the court below on May 18, 1982. It was alleged therein that the Inspector visited one shop of M/s Bordia Medical Stores, Nokha on August 21, 1931. There he found Analgin-500 IP tablet prepared under label of Batch No. 118 with the manufacturing date of September, 1979. He suspected the aforesaid medicine to be of substandard quality. He purchased the tablets for examination purpose from accused Kanhaiya Lal, Proprietor of M/s Bordia Medical Stores by making a payment of Rs. 54/- in cash to him. The sample of the medicine was sent for examination to the Public Analyst, Rajasthan Jaipur. On test, the sample did not give positive identification for Analgin. It was alleged that the medicine was manufactured by accused M/s Fine Pharmaceutical

Industries, Indore The accused-petitioners are partners in the said manufacturing industries. It was further alleged that M/s Bordia Medical Stores had purchased the aforesaid Analgin from M/s Rajesh Medical Agencies, Jodhpur of which accused Omprakash, Ummaidraj and Laxmandas were the partners. It was also alleged that M/s Rajesh Medical Agencies had purchased the Analgin from M/s Fine Pharmaceutical Industries, Indore. Since the Analgin was found of substandard quality, all the accused-petitioners had committed the offence the offence punishable u/s 32 read with Section 18 of the Act. The learned Magistrate took cognizance and issued warrants with bail provision against the 14 accused-persons named in the complaint. Aggrieved against the said order, some of the accused-persons who own and hold partnership in M/s Fine Pharmaceutical Industries have come up in revision to this Court. I have heard the learned counsel for the accused petitioners and the learned Public Prosecutor.

3. It was vehemently contended by Mr. M.D. Purohit, learned Counsel for the petitioners, that the court below had no territorial jurisdiction to take cognizance of the offence against the accused-petitioners. The Analgin was manufactured at Indore. The sample was not purchased at Indore. The Chief Judicial Magistrate, Bikaner, there, could not take cognizance against them as the offence was not committed within local limits of his jurisdiction. Reliance was placed on Section 177 of the Cr. PC. A photostat copy the judgment of the Madhya Pradesh High Court passed in M/s Bhasin Drugs Pharmaceutical Industries Pvt. Ltd, Bombay v. State of Madhya Pradesh in Criminal Revision No. 207/77, decided on August 7, 1978, was admitted before me. In reply, the learned Public Prosecutor submitted that the offence is a continuing one and was committed in more local areas than one. It was also argued that though the medicine was manufactured at Indore, the consequence had resulted at Nokha. as much the offences could be enquired and tried by the court of Chief Judicial Magistrate, Bikaner. The learned Public Prosecutor relied upon Sections 178 & 179, Cr. PC in support of his contention. I have taken the respective contentions into consideration. It may be stated that the view taken by the Madhya Pradesh High Court in the case referred to above has been accepted by their Lordships of the Supreme Court when the State of Madhya Pradesh went in revision against that order. Their Lordships of the Supreme Court, after hearing the counsel, dismissed the special leave petition. As such, the decision given in M/s Bhasin's case is of considerable help in resolving the controversy between the parties.

4. Section 177 of the Cr. PC lays down that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This section is based on the general principle of law that all crime is local. Since the medicine was not manufactured by the accused-petitioners within the limits of the local jurisdiction of Chief Judicial Magistrate, Bikaner, it could not be tried by him as against the accused-petitioners. Sections 178 and 179 are of no help to the prosecution. The medicine was not sold by the accused-petitioners to M/s Bordia Medical Stores at Nokha. The medicine was sold to M/s Bordia Medical Stores, Nokha by M/s Rajesh Medical Agencies, Jodhpur. The accused-

petitioners nowhere come in picture in this sale.

5. In the case of M/s Bhasin, the provisions of Sections 177, 178 and 179 Cr. PC were considered at length. A number of authorities having a direct bearing on the point were noticed. In that case also M/s Bhasin Private Limited, Company manufactured the medicine at Bombay and the medicine was found to be of substandard quality when the sample of it was taken at Indore. It was held that the court at Indore has no jurisdiction to try the case against M/s Bhasin. It was further held that the sale of medicine at Indore is not the consequence mentioned in Section 179, Cr. PC. The consequence which is not material to the culpability of the accused in relation to the particular offence, is not the consequence contemplated by Section 179, Cr. PC.

6. As per allegations disclosed in the complaint in the instant case in ray hand, the accused-petitioners did not sell the medicine to the either accused-persons either at Jodhpur or at Nokha. In these circumstances, it cannot be said that the accused-petitioners contravened any provisions of the Act within the limits of the local jurisdiction of the court at Bikaner.

7. For the reasons mentioned above, this application is allowed. The impugned order dated May 18, 1982 so far it relates to the accused-petitioners is set aside and the proceedings taken thereunder against them are quashed.