

Asm Enterprises & Ors vs State on 23 December, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 2072/2020

ASM ENTERPRISES & ORS.

Through

Shri Madhav Khurana, M
Bains and Ms.Riya Arora

versus

STATE

Through

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Mr.Sanjay Lao,
Mr.Karamjeet Rai Sharma
Mr.K.R.Chawla, Assis
Controller

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 23.12.2020 The petitioner vide the present petition seek the quashing of the FIR No.135/2020 PS Narela Industrial Area and Sections 18/27 of the Drugs and Cosmetics Act, 1942 and proceedings emanating therefrom.

It has been contended on behalf of the petitioner that the institution of the said FIR lodged on 10.03.2020 is not in consonance with law as laid down by the Hon'ble Supreme Court in Union of India Vs Ashok Kumar Sharma and Ors. 2020 SSC Online SC 683 with specific reliance placed on paragraphs 1, 2, 45 and 162 of the said verdict.

Notice of the petition has been issued to the State and submissions have been made on behalf of the petitioner on 21.12.2020 also, when time had been sought on behalf of the State to make submissions.

The verdict of the Hon'ble Supreme Court in Union of India Vs Ashok Kumar Sharma & Ors. (Supra) is a verdict dated 28.08.2020 which deals with the aspect of the interplay between the provisions of the Code of Criminal Procedure, 1973 and Drugs and Cosmetics Act, 1940 and qua the aspect as to whether in respect of the offences falling under Chapter IV of the Act, an FIR can be registered under Section 154 of the Cr.P.C. and whether the case can be investigated or whether under Section 32 of the said enactment supplanted the procedure for investigation of offences under the Cr.P.C. for taking of the cognizance of the offences under Section 190 of the Cr.P.C. and also qua the aspect as to whether the Inspector could arrest the person in connection with the offence under Chapter IV of

the Act.

The concluding para of the said verdict i.e. para 162 thereof culls out the conclusion and directions of the Hon'ble Supreme Court to the effect:-

"162. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment. VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but

also immediately report the arrests to their superior Officers."

making it categorical thus that qua cognizable offences under Chapter IV of the Drugs and Cosmetics Act, 1940 in view of Section 32 of the said enactment which reads to the effect:-

"32 Cognizance of offences. -- 164 [(1) No prosecution under this Chapter shall be instituted except by--

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.] (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

and also the scheme of Cr.P.C.1973, the police officer cannot prosecute offenders in relation to the offences under Chapter IV of the Drugs and Cosmetics Act, 1940 and only persons under Section 32 of the said enactment are entitled to do so, though there is a saving provision in Section 32(3) of the said enactment i.e. Drugs and Cosmetics Act, 1940 laying down to the effect that there is no bar to the police officer to investigate and prosecute the persons when he has committed an offence as stated under Section 32 (3) of the said Act i.e. if he has committed any other cognizable offence under any other law, but that the police officer cannot register an FIR under Section 154 of the Cr.P.C. in relation to the cognizable offences under Chapter IV of the said enactment and cannot investigate such offences under the provisions of the Cr.P.C.,1973.

It is apparent thus that the FIR no.135/2020 PS Narela Industrial Area under Sections 18 and 27 of the Drugs and Cosmetics Act, 1940 which fall categorically within Chapter IV of the Drugs and Cosmetics Act, 1942, cannot continue and could not have been registered and has to be quashed.

In view thereof, the FIR No.135/2020 PS Narela Industrial Area under Sections 18 and 27 of the Drugs and Cosmetics Act, 1940 is quashed in view of the verdict of the Hon'ble Supreme Court in Union of India Vs Ashok Kumar Sharma (Supra).

Nevertheless it would be open to the authorities under the Drugs and Cosmetics Act, 1940 to seek action, if any in relation to the allegations that have been made in relation to which the FIR had

been registered qua alleged illegal manufacture of hand sanitisers without holding of licence in terms of the Drugs and Cosmetics Rules, 1945 requiring the manufacturing of drugs in accordance with law.

It is essential to observe that the other aspects that have been sought to be contended through the petition in relation to the aspect that the petitioners were not manufacturing any hand sanitisers illegally for the purposes of sale or distribution or that they were only in the process of destroying the possession of the stock of hand sanitisers due to reduced manpower on account of the pandemic outbreak are aspects which have not been considered presently in view of the factum that the FIR in question is quashed. However, it would be open for the petitioner to make the submissions in relation thereto before the authorities under the Drugs and Cosmetics Act, 1940.

The petition is disposed of.

ANU MALHOTRA, J DECEMBER 23, 2020/sg