

Vimal Arora vs State Of Nct Of Delhi on 19 February, 2025

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P. 28/2022
VIMAL ARORA

Through:

versus

STATE OF NCT OF DELHI

Through:

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 19.02.2025

1. The instant petition under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter "Code") read with Sections 401 and 482 of the Code [now under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] read with Sections 442 and 528 of the BNSS] has been filed on behalf of the petitioner seeking setting aside of the order dated 22nd October, 2021 (hereinafter "impugned order") passed by the learned Additional Sessions Judge-02, Karkardooma Courts, Delhi (hereinafter "ASJ"), wherein charges under Sections 420/511 of the Indian Penal Code, 1860 (hereinafter "IPC") and Section 27A(ii) of the Drugs and Cosmetics Act, 1940 (hereinafter "Cosmetic Act") were framed against the petitioner.

2. The brief facts of the case, as per the FIR, are that on 20th March, 2014, an information was received by one SI Amit Verma regarding the illegal business carried out by re-labelling of the expired goods at H.No. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:26:23 2/61, Lalita Park, Laxmi Nagar, Delhi (hereinafter "subject premises"). It is stated that one Mr. Vimal Arora (petitioner herein) and Mr. Mohit Dhand were found in the subject premises and upon visiting the basement and first floor of the said premises, it was alleged that large quantities of cosmetics with expired dates were found alongwith their respective boxes.

3. Accordingly, an FIR bearing no. 600/2014 was registered under Sections 420/511 of the IPC at Police Station - Shakarpur, New Delhi.

4. After completion of the investigation, the investigating authority filed the chargesheet dated 18th November, 2013 against the petitioner under Sections 420/511 of the IPC and Section 18(c) of the Cosmetics Act.

5. Thereafter, learned ASJ passed the impugned order, wherein, charges under Sections 420/511 of the IPC and Section 27A(ii) of the Cosmetic Act were framed against the petitioner.

6. Aggrieved by the same, the petitioner has filed the instant petition seeking setting aside of the impugned order.

7. Learned counsel appearing on behalf of the petitioner submitted that the learned ASJ passed the impugned order without considering the material placed on record and therefore, the same is liable to be set aside.

8. It is submitted that the learned ASJ failed to appreciate the fact that the concerned police officer raided the subject premises without proper authorization from the senior officials. Furthermore, the raid was conducted by the concerned police officer in absence of concerned officials of Drugs and Cosmetics Department of GNCT Delhi, thereby violating the statutory mandate of mandatory requirement of the said officials during such raid.

9. It is further submitted that the learned ASJ has failed to appreciate that the petitioner herein is falsely implicated in the present case as no This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:26:23 illegal activity of labeling expired goods and manufacturing the same were taking place at the subject premises.

10. It is submitted that there is a difference between the act of preparation and an attempt to commit an offence, wherein the former is not an offence unlike the latter. In support of his argument, learned counsel for the petitioner relied on the case of Malkiat Singh Vs. State of Punjab, 1959 SCR (2) 663, wherein the Hon'ble Supreme Court differentiated between 'attempt' and 'preparation' of crime.

11. It is further submitted that there is no sufficient material on record proving a prima facie case against the petitioner and therefore, order of framing charges against the petitioner is illegal and without talking into consideration the material on record.

12. In light of the foregoing submissions, it is prayed that the impugned order dated 22nd October, 2021 may be set aside while allowing the instant petition.

13. Per contra, learned APP appearing on behalf of the State vehemently opposed the instant petition and submitted that there is sufficient material on record for prima facie satisfaction of the learned ASJ for the purpose of framing charges against the petitioner.

14. It is submitted that while passing the impugned order, the learned ASJ has rightly considered the material on record such as the contents of the chargesheet, complaint of the Drugs Inspector and the licence provided by the petitioner for determination of a prima facie case against the petitioner.

15. It is further submitted that it is a settled position of law that the Court concerned is not required to evaluate the material in entirety and consider the defense of the accused at the stage of framing of charges.

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16. It is further submitted that this Court has limited powers to interfere with the impugned order while exercising revisional jurisdiction and the said interference can be done only if there is a glaring irregularity in the order passed by the Sub-ordinate Court. However, the learned ASJ has relied on the sufficient material on record required for framing charges against the petitioner.

17. In light of the foregoing submissions, it is prayed that the instant petition is bereft of any merits and may be dismissed.

18. Heard learned counsel for the parties and perused the record.

19. It is a settled position of law that the revisional jurisdiction conferred upon this Court is limited in nature and therefore, the same cannot be exercised in a mechanical manner. However, the said revisional jurisdiction can be exercised when there is a gross illegality or irregularity in the findings given by the court below. The said principle was encapsulated by the Hon'ble Supreme Court in the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, wherein, it was categorically observed that the revisional jurisdiction can be invoked only when the Subordinate Court has passed an order which is grossly erroneous and ignored the pertinent evidence on record, however, the same is not exhaustive in nature and differs with every case based on the merits of the same.

20. Therefore, keeping the foregoing in mind, the limited question for adjudication before this Court is whether the learned ASJ rightly framed charges against the petitioners.

21. It is trite law that the revisional Court can only interfere when the impugned order suffers from severe illegality or irregularity, this Court finds it apposite to examine the findings of the impugned order. The relevant This is a digitally signed order.

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"8. In the present case, the allegations are that the accused Vimal Arora was found in possession of expired cosmetics and also with cosmetics with same colour and design upon which labels of his company had been/were being passed pasted to pass them off as usable cosmetics within date of expiration. He thus made preparations with the intention to pass off expired cosmetics as usable cosmetics. The penultimate act of actually offering for sale or selling of such cosmetics could not be committed as he was apprehended. Thus in view of the law as laid down in the case of *Abhayanand Mishra v. State of Bihar* (supra), the accused Vimal Arora is liable to be charged for the offence under section 420/511 IPC.

9. As far as the offence under section 27 A(ii) of the Drugs and Cosmetics Act is concerned, section 18(c) of the Act prohibits manufacture for sale or for distribution and prohibits selling, stocking or exhibiting or offering for sale or distributing any drugs or cosmetics except under and in accordance with conditions of a licence issued for such purpose. It was submitted on behalf of the accused that Vimal Arora had a valid licence issued to him under the Drugs and Cosmetics Act. Perusal of the copy of the licence issued to Vimal Arora which has been filed with the complaint of the Drugs Inspector reveals that the same was issued in favour of Mis Saganie Industries for the premises B-52, Second Floor, DSIDC, Jhilmil Industrial Area, Shahdara, Delhi for ten creams. The said licence was not issued for manufacturing of 'Tulsiam Herbal Body Lotion' and 'Tulsiam Herbal Oil'.

10. Further Rule G2 of the Drugs and Cosmetics Rules 1945 prescribed that if drugs are sold or stocked for sale at more than one place, separate application shall be made and separate licence shall be issued in respect of such place. In the present case the licence which has been issued to Mis Saganie Industries is for the premises B-52, Second Floor, DSIDC, Jhilmil Industrial Area, Shahdara, Delhi and not for House No.2/61, Lalita Park, Laxmi Nagar, Delhi from where the This is a digitally signed order.

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11. It had been submitted that the cosmetics had been tested by the Drugs Testing laboratory but no opinion regarding the samples could be given. The same is of no consequence to the present case as the complaint filed by the Drug Inspector is for contravention of section 18 (c) of the Drugs and Cosmetics Act for Stocking of cosmetics without any licence.

12. As far as the case law relied upon by the Ld. Counsel for the accused is concerned, the same do not apply to the facts and circumstances of the present case which is at the stage of consideration on charge.

13. It is settled law that at the stage of framing of charge, the court is not required to consider whether the proceedings will result in conviction or not. If the material relied upon leads to grave suspicion against a person accused of committing an offence, charge is to be framed. In the present case, the material filed with the charge-sheet as well as the complaint of the Drugs Inspector leads to grave suspicion against Vimal Arora that he was attempting to pass off expired cosmetics as usable and he had no valid licence to manufacture or stock the cosmetics 'Tulsi dm Herbal Body Lotion' and 'Tulsi dm Herb21 Oil' at the premises House No.2161, Lalita Park, Laxmi Nagar, Delhi. There is therefore, sufficient material on the record to frame charges against Vimal Arora for the offences under sections 420/511 IPC and section 27 A (ii) of the Drugs and Cosmetics Act, 1940."

22. From the foregoing extracts of the impugned order, it is observed that the learned ASJ relied upon the material available on its record i.e., the contents of the chargesheet, complaint filed by the Drugs Inspector and invalid licence provided by the petitioner in order to arrive at a conclusion that there exists a prima facie case against the petitioners for the offences punishable under Sections 420/511 of the IPC and Section 27A(ii) of the This is a digitally signed order.

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23. Before advertng to the instant case, it is apposite for this Court to mention the case of State v. A. Arun Kumar, (2015) 2 SCC 417, wherein, it was categorically observed by the Hon'ble Supreme Court that at the stage of framing of charges, the Courts are only required to evaluate the material on record to solely determine whether a prima facie case is made out against the accused or not.

24. Furthermore, in the case of Tarun Jit Tejpal v. State of Goa, (2020) 17 SCC 556, the Hon'ble Supreme Court also observed that the submissions made on the merits of the case should be taken at an appropriate stage, including the defence of the accused as the same is not relevant at the stage of framing of charges. The foregoing principle of law was also encapsulated in the case of State of T.N. v. R. Soundirarasu, (2023) 6 SCC 768 as well.

25. Keeping the foregoing law in mind, it is the contention of the petitioner that there is no material on record to indicate that the petitioner has committed an offence punishable under Sections 420/511 of the IPC and Section 27A(ii) of the Cosmetic Act as it is falsely considered by the learned ASJ that the petitioner was re-labelling the expired cosmetics for further consumption. Furthermore, it is contended that the re-labelling of the cosmetics amounts to mere preparation and the same is not an offence as per the settled principle of law.

26. In light of the same, for the sake of convenience, this Court finds it apposite to peruse the contents of the chargesheet. The relevant extracts of the same are as follows -

"The facts of the challan are that on 20-03-2014 SI Amit Verma along with Ct. Gaurav was on petrol duty and at about 10.30 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:26:25 P.M. when he reached Minar Masjid Lalita Park, where one informer met him and informed that in house No. 2/61, Lalita Park, Laxmi Nagar, Delhi cheating business is being carried out by relabeling expired goods and at this hour the owner of the house is also present and and if raided good amount of such goods could be recovered. On this the SI asked 4-5 public persons to join the raiding party but they all refused by making one or the other excuse. Thereafter without wasting time the said SI reached the said premises and found two persons namely Vimal Arora S/o Sh. Gyan Chand Rio 135, New Rajdhani Enclave, Ground Floor, Preet Vihar, Delhi age 40 years and Mohit Dhand S/o Pradeep Kumar, Rio 183, Ram Nagar Extn., Delhi-51. age-36 years were found sitting on the ground floor office at the premises. When he visited the basement and the first floor he found a large quantity ofCosmetics items lying over there. On checking it was found that some of them were of expired date and with them boxes of same size and colour were also lying and on seeing them it could be gauzed that the same were used for relabeling by repealing the labels from the expired goods and put the label of company by the name of Tulsiam. The 10 made preliminary inquiries from the Vimal Arora and Mohit Dhand on which Vimal Arora told the SI that he is the owner of Tulsiam a cosmetics Company and Mohit Dhand told the SI that print the labels of Tulsiam Company.but they could not give any satisfactory reply with respect to the activities that were going on in the premises. SI came to know that this man sells large quantities of expired products by relabeling the same and cheats the public. The SI on finding such large quantities of dubious cosmetics material at the basement, ground and first floor of the premises and thus the SI tried to contact the Drugs and Cosmetics department of GNCT, Delhi and after informing them further proceedings would be conducted. Thereafter on finding such dubious activities and such large quantities of Expired cosmetic products the SI found it prima facie to be a case of 420/511 IPC and thus got the FIR regd. under sections 420/511 IPC and himself started the investigation. The SI inspected the spot and prepared the site plan. And than SI This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:26:25 made inquiries from Mohit Dhand who told him that he prints and supply the label for Vimal Arora in the name of Tulsiam Company on contract basis. He has no knowledge that the labels supplied by him were used by Vimal Arora on Expired products or not. Who was relieved by the SI after inquiry as he was found to have no bad intention. Than th SI interrogated Vimal Arora who stated that he is the owner of Tulsiam Company which is registered in Shahadra and he does not have licence for 2/61, Lalita Park Factory. He further stated that from

different sources he purchases cosmetic products of Expired date and after removing their labels and by putting the label of Tulsiam Co. I supply them in market. The SI than after reaching of the officers from Drugs and Cosmetics Department GNCT, Delhi at the spot 2/61, Lalita Parak Laxmi Nagar basement, ground and first floor Got the photographs and prepared the Video of the big quantity of stored cosmetic finished products, labels which are stored in CD. The said SI on finding sufficient evidence against Virnal Arora then arrested him. The officers of Drugs and Cosmetics department inspected the place. And after inspection handed over the documents to SI which is attached with the file. Their statements were recorded by the SI. The information with regard to arrest of Vimal Arora was given to his wife Ms. Meetu Arora. The accused was produced before court and got sent to JC. Than the SI added section 1 8C Drugs and Cosmetics Act. On 23/03/2014 the SI had safeguarded the spot seized the case property by preparing separate seizure memos and seized the same and took into police possession and got deposited in Malkhana. Desealed the property. And when accused Vimal Arora was released on bail by court than SI handed over the copy of the seizure memos to him. That samples which were seized from the spot along with the material from the spot were sent for FSL examination but the same were sent back by the FSL with the endorsement that such goods are not examined at FSL. Thereafter the said samples were again deposited in 'Malkhana' and then sent to the officials of Drugs and Cosmetics Department GNCT of Delhi and their laboratory gave report of "No Opinion" and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:26:25 thereafter after the transfer of SI Amit Verma the investigation was transferred to the present Who perused the file and during investigation contacted the officials of Drugs and Cosmetics department GNCT, Delhi and received the report from Drugs and Cosmetics department GNCT, Delhi investigation and after investigation filed charge sheet in the case for the offences under sections 420/511 IPC and section 18C Drugs and Cosmetics Act 1940."

27. Upon perusal of the aforesaid extracts, it is observed that the concerned police officer found expired cosmetics at the subject premises with the label M/s Tulsiram and with the same colour and design with the label of his company in order to sell them as usable cosmetics.

28. It is a trite law that for the commission of the offence of cheating under Section 420 of the IPC, there must be an act which would lead to the deception of the person sought to be cheated and the moment a person takes a step forward to deceive, the said person is sought to be cheated. The Hon'ble Supreme Court in the case of Abhayanand Mishra v. State of Bihar, (1962) 2 SCR 241, has dealt with not only the difference between 'preparation' and 'attempt to commit an offence', but also the offences punishable under Section 420 and 511 of the IPC. The relevant portion of the same is as follows -

"11. Another contention for the appellant is that the facts proved do not go beyond the stage of preparation for the commission of the offence of cheating, and do not make out the offence of attempting to cheat. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to This is a digitally signed order.

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"Whoever attempts to commit an offence punishable by this Code ... or to cause such a offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished...."

These provisions require that it is only when one, firstly, attempts to commit an offence and, secondly, in such attempt, does any act towards the commission of the offence, that he is punishable for that attempt to commit the offence. It follows, therefore, that the act which would make the culprit's attempt to commit an offence punishable, must be an act which, by itself or in combination with other acts, leads to the commission of the offence. The first step in the commission of the offence of cheating, therefore, must be an act which would lead to the deception of the person sought to be cheated. The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence, as contemplated by Section 511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence."

29. Therefore, in light of the aforesaid law as well as the contents of the chargesheet, as discussed above, the activity of re-labelling of cosmetics sufficiently indicate that the petitioner seems to have committed an offence under Sections 420/511 of the IPC based on the prima facie perusal of the This is a digitally signed order.

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30. At this juncture, it is pertinent to peruse the license provided by the petitioner as well as the samples taken by the concerned police officer, which is part of the Lower Court Record.

31. It is observed that the concerned police officer i.e., SI Vimal Arora took samples of 'Tulsiam Herbal Body Lotion' and 'Tulsiam Herbal Oil' as per Section 23(1) of the Cosmetics Act. It is noted that the license bearing no. E(0148)/14/CM was issued to one M/s Sagarde Industries, which is situated at B-52, 2nd Floor, DSIDC, Jhilmil Industrial Area, Shahdara, Delhi

- 110035 and the same was valid from 28th January, 2014 to 27th January, 2019. However, the said licence was not issued for the manufacture of 'Tulsiam Herbal Body Lotion' and 'Tulsiam Herbal Oil'.

32. Moreover, the licence was issued to M/s Sagarde Industries, which is situated at B-52, 2nd Floor, DSIDC, Jhilmil Industrial Area, Shahdara, Delhi

- 110035, whereas the activity of the petitioners were caught at the subject premises i.e., at H.No. 2/61, Lalita Park, Laxmi Nagar, Delhi, thereby, amounting to contradictions.

33. From the foregoing discussions and upon conjoint reading of the contents of the chargesheet as well as the license provided by the petitioner and samples collected by the concerned police officer, it is made out that the petitioner has committed an offence Sections 420/511 of the IPC and Section 27A(ii) of the Cosmetics Act, thereby, making a prima facie case against the petitioners for framing of charges in the instant case. Moreover, given the facts and circumstances of the case alongwith the material on This is a digitally signed order.

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34. Considering the foregoing discussions on law and facts, this Court is of the considered view that the learned ASJ was right in framing charges under Sections 420/511 of the IPC and Section 27A(ii) of the Cosmetics Act against the petitioner as prima facie case is made out..

35. Given the limited jurisdiction of this Court, while exercising revisional powers, this Court finds no reason to interfere with the impugned order at this stage of framing of charge. Therefore, this Court is of the considered view that there is no illegality in the impugned order dated 22nd October, 2021, passed by the learned Additional Sessions Judge-02, Karkardooma Courts, Delhi in SC No. 1349/2018, arising out of FIR bearing no. 600/2014, registered at Police Station - Shakarpur, New Delhi, and the same is, hereby, upheld.

36. Accordingly, the instant revision petition stands dismissed along with pending applications, if any.

37. It is made clear that any observations made hereinabove are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The Court concerned shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

FEBRUARY 19, 2025 CHANDRA DHARI SINGH, J NA/mk/ryp Click here to check corrigendum, if any This is a digitally signed order.

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