

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 144 of 2022

1. M/s Zee Laboratories Limited, having office at behind 47, Industrial Area, Paonta Sahib, 13025, Dist.- Sirmouris (Himachal Pradesh) through its Technical Director Anant Jain, aged about 41 years, son of Subhash Chandra Jain, resident of Vikas Nagar, P.O. & P.S.- Vikasnagar, Dist.- Dehradun, Uttrakhand.
2. Sri Anant Jain, aged about 41 years, son of Subhash Chandra Jain, resident of Vikash Nagar, P.O. & P.S.- Vikasnagar, Dist.- Dehradun, Uttarakhand.

..... Petitioners

Versus

1. The State of Jharkhand
2. Sri Rajesh Kumar, son of not known to the petitioner, Inspector of Drugs, Sahibganj, P.O. , P.S. and Dist.- Sahibganj

..... Opposite Parties

For the Petitioners : Ms. Sonal Sodhani ,Adv.
For the State : Mr. Sachin Kumar, AAG II

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of CrPC with a prayer for quashing the entire criminal proceedings as well as the order taking cognizance dated 04.06.2015 passed in connection with OCR No. 161 of 2015 which has been lodged involving the offences punishable under Section 18 a(i) and 27D of the Drugs and Cosmetics Act,1940.
3. The brief facts of the case is that the Drug Inspector on 25.09.2013 collected samples of drugs being Parayes 500 tablets, from the Drugs Store, Sadar Hospital Sahibganj and sent the same for analysis to the Government Analyst. The Government Analysts reported that the samples was not of standard quality in respect of the content of the Paracetamol which is below the prescribed limit and as the test report found that the content of Paracetamol was

89.20% of the claim. The said drug was manufactured by the petitioner no. 1 which is the accused no. 1 of the complaint, and the petitioner no. 2 is the Technical Director of the accused no. 1 of the complaint, namely Zee Laboratories Limited. It was alleged that the accused nos. 1 to 4, have manufactured and sold the drug which is not of standard quality, the complaint was lodged by the Inspector of Drugs, Sahibganj, Jharkhand, on behalf of the State of Jharkhand.

4. Learned counsel for the petitioners submits that the petitioners being the accused no. 1 and 2 of the complaint case, are residing in a place beyond the area, in which, learned SDJM, Sahibganj concerned who has issued the process against the petitioners, exercising his jurisdiction, so learned SDJM, Sahibganj ought to have postponed the issue of the process against the petitioners, who are accused persons of the case and either could have enquired into the case himself, or could have been directed for investigation to be made by the police officer or by such other person, whom he deems fit for the purpose of deciding whether or not there is sufficient ground for proceeding but learned SDJM, Sahibganj having not done so, but instead of either enquiring the case himself, or directing an investigation to be made by a police officer, having ordered for issue of the process as well, hence, the same is not sustainable in law and to buttress her submission, learned counsel for the petitioners, relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Udai Shankar Awasthi vs. State of Uttar Pradesh and Anr.** reported in **(2013) 2 SCC 435** wherein in the facts of that case, the complaint case involved the offences punishable under Section 403 and 406 of the IPC, 1860 and where the complaint was filed by private persons, but the magistrate concerned, without meeting the mandatory requirements of Section 202 of Cr.P.C, where the accused persons of the case were outside his territorial jurisdiction considering the object of amended section 202 of the Cr.P.C as amended by Amendment Act of 2005, making it mandatory to postpone the

issue of process where the accused resides in an area, beyond the territorial jurisdiction of the Magistrate concerned and that the object of the amendment was to protect innocent persons, being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case or to direct investigation to be made by the police officer, the Hon'ble Supreme Court of India, also considering the attending facts of that case and the other justifiable reasons, for quashing the complaint, quashed the same.

5. Learned counsel for the petitioners, further relies upon the judgment of the co-ordinate Bench of this court in the case of **Karnatka Antibiotic & Pharmaceuticals Ltd. through its Company Secretary & Deputy General Manager (Admn.), Supriya Kulkarni & Ors. vs. State of Jharkhand & Anr.** reported in **2024 SCC Online Jhar 340**, submits that in that case also, this Court has referred to a judgment of a co-ordinate Bench of this court in the case of **Krishna Nand Shastri & Others vs. State of Jharkhand, through Inspector of Drugs** reported in **2023 SCC OnLine Jhar 517** wherein in the facts of that case when the case was pending in the court of learned Chief Judicial Magistrate, Deoghar and the learned Magistrate without postponing the issue of process even though the accused persons were residing outside the area of its jurisdiction, took cognizance of the offence, quashed the cognizance order. In that case, this Court also considered upon the judgment of a co-ordinate Bench of this Court in the case of **Maithon Power Limited, through its authorized Signatory Mr. Satish Kumar & Another vs. State of Jharkhand & Another** reported in **2022 SCC OnLine Jhar 821** wherein in the facts of that case where the penal offences involved were under Sections 276 (B) and 278 (B) of the Income Tax Act, when the case was pending in the court of Special Judge, Economic Offences, Dhanbad, in the facts of that case taking into consideration the cumulative effects of the discussion made by it, quashed the order passed by the

Special Judge, Economic Offences, Dhanbad in connection with C.O. Case No.13 of 2017.

6. It is next submitted by learned counsel for the petitioners that the cognizance is barred by Section 468 of the CrPC which envisages that if the maximum punishment of an offence is up to three years, the time period for filing of such complaint is one year, and in this case, the punishment is up to two years and as the sample was received by State Drug Testing Laboratory on 18.10.2013 and the report was submitted on 15.01.2014, but the complaint having been instituted beyond the statutory period of one year i.e. 04.06.2015, the same is barred by limitation.
7. It is next submitted by the learned counsel for the petitioners that the provisions of Section 27 D of the Drugs and Cosmetics Act, 1940 is not attracted against the petitioners as the drug was of sub-standard quality, hence, it is submitted that the entire criminal proceedings as well as the order taking cognizance dated 04.06.2015 passed in connection with OCR No. 161 of 2015 be quashed and set aside.
8. Learned AAG II on the other hand vehemently opposes the prayer of the petitioners and by drawing attention of the court to Section 2(d) of the CrPC, submits that the complaint as defined in said Section 2(d), does not make any discrimination between a private and an official complaint. Drawing attention of the court to proviso (a) of Section 200 of the CrPC, it is submitted by learned AAG II that though Section 200 of the CrPC, envisages that learned Magistrate taking cognizance of an offence on complaint, shall examine upon oath the complainant, but the said proviso 'a' of Section 200 of CrPC, provides that if the complaint is made by a public servant, the magistrate need not examine him and hence, the same analogy will be applicable for the purpose of postponement of issue of process as envisaged under Section 202 of the CrPC; even though section 202 of the Code of Criminal Procedure, has not provided for any different procedure to be adopted, if the complaint is made by a public servant, unlike

section 200. Drawing attention of the court to Section 36 (A) (D) of the Drugs and Cosmetics Act, 1940, it is submitted by learned AAG II that the provisions of CrPC shall apply to the proceedings before a Special Court and for the purposes of the said provision, a Special Court shall be deemed to be a court of Sessions, save and except, the provisions of the CrPC which have been saved by Drugs and Cosmetics Act, 1940; the other provisions of Code of Criminal Procedure would be applicable to the proceedings before such Special Court.

9. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Union of India vs Ashok Kumar Sharma** reported in **AIR 2020 SC 5274, para 40** of which reads as under:-

"40. Section 32 of the Act undoubtedly provides for taking cognizance of the offence by the court only at the instance of the four categories mentioned therein. They are: (a) Inspector under the Act; (b) Any Gazetted Officer empowered by the Central or the State Government; (c) Aggrieved person; and (d) Voluntary Association. It is clear that the Legislature has not included the Police Officer as a person who can move the court. Before the matter reaches the court, under Section 190 of the CrPC, ordinarily starting with the lodging of the first information report leading to the registration of the first information report, investigation is carried out culminating in a report under Section 173. The Police Report, in fact, is the Report submitted under Section 173 of the CrPC to the court. Under Section 190 of the CrPC, the court may take cognizance on the basis of the police report. Such a procedure is alien to Section 32 of the Act. In other words, it is not open to the Police Officer to submit a report under Section 173 of the CrPC in regard to an offence under Chapter IV of the Act under Section 32. In regard to offences contemplated under Section 32(3), the Police Officer may have power as per the concerned provisions. Being a special enactment, the manner of dealing with the offences under the Act, would be governed by the provisions of the Act. It is to be noted that Section 32 declares that no court inferior to the Court of Sessions shall try offence punishable under Chapter IV. We have noticed that under Section 193 of the CrPC, no Court of Sessions can take cognizance of any offence as a Court of Original Jurisdiction unless the case has been committed to it by a Magistrate under the CrPC. This is, undoubtedly, subject to the law providing expressly that that Court of Sessions may take cognizance of any offence as the Court of Original Jurisdiction. There is no provision in the Act which expressly authorises the special court which is the Court of Sessions to take cognizance of the offence under Chapter IV. This means that the provisions of Chapters XV and XVI of the CrPC must be followed in regard to even offences falling under Chapter IV of the Act. Starting with Section 200 of the Act dealing with taking of cognizance by a Magistrate on a complaint, including examination of the witnesses produced by the complainant, the dismissal of an unworthy complaint under Section 203 and following the procedure under Section 202 in the case of postponement of issue of process are all steps to be followed. It is true that when the complaint under Section 32 is filed either by the Inspector or by the Authorised Gazetted Officer being public servants under Section 200, the Magistrate is exempted from examining the complainant and witnesses."
(Emphasis supplied)

It is further submitted by learned AAG II that no illegality has been committed by learned SDJM, Sahibganj in not postponing the process and neither enquiring into the case himself, not directing the investigation to be made by the police

officer or by such other person, as it thinks fit, even though, undisputedly, the petitioner no. 1 and 2 , who are the accused person nos. 1 and 2 of the complaint, have been residing at a place beyond the area, in which the SDJM, Sahibganj concerned, exercising its jurisdiction. It is further submitted that from bare perusal of the complaint, it is found out that the offences are made out against the petitioners also, besides the co-accused persons hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that Section 36AB of the Drugs and Cosmetics Act, 1940 provides for certain offences punishable under the penal provisions of the Drugs and Cosmetics Act, 1940 to be tried by the special court. So it is crystal clear that the special court has referred to in Section 36AB of the Drugs and Cosmetics Act, 1940 he is not supposed to try all the penal offences under the Drugs and Cosmetics Act, 1940. So in respect of the offences made out from the penal provisions under the Drugs and Cosmetics Act, 1940, which do not find place in Section 36AB of the Drugs and Cosmetics Act, 1940, is to be tried by the magistrates. Now coming to the facts of this case none of the offences involved in this case, are the offences mentioned in Section 36AB of the Drugs and Cosmetics Act, 1940. So, the undisputed fact remains that the offences involved in this case are not to be tried by a Special Court as referred to in Section 36AB of the Drugs and Cosmetics Act, 1940.

11. So far as the contention of the petitioners regarding non-compliance of the postponement of the process, as mentioned in Section 202 of the CrPC is concerned, the undisputed fact remains that the complaint was filed in the court of learned SDJM, Sahibganj. It is pertinent to mention here that the Hon'ble Supreme Court of India, in the case of **Union of India vs. Ashok**

Kumar Sharma (supra) culled out conclusions/ directions in para 150 of the said judgment, which reads as under :-

“150. 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.”*

12. So far as the contention of learned AAG II is concerned, it will be pertinent to refer to **Section 200 of the CrPC** which, reads as under:-

200. Examination of complainant. – A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses –

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them. (Emphasis supplied)

this Court do not find any force in the contention of learned AAG II that the complainant need not be examined, if the

complainant is a public servant acting or purporting to act in discharge of his official duty, the proviso in section 200 of the Code of Criminal Procedure providing exemption of his and the other witnesses from examination; can even though not specifically provided for, also be extended to Section 202 of the CrPC regarding the postponement of process, which after its amendment inserted by Section 19 of the Act 25 of 2005 with effect from 23.06.2005, makes it mandatory for any Magistrate to postpone the issue of process against the accused, if such accused is residing at a place beyond the area in which, learned Magistrate concerned exercises its jurisdiction. Firstly, because had it been the intention of the legislature, that postponement of the issue of processes as envisaged in section 202 of the Code of Criminal Procedure was not applicable to the complaints filed by the public servant, acting or purporting to act in discharge of its official duty, it must have mentioned the same specifically and having not done so, certainly, this court is not inclined to interpret Section 202 of the CrPC by adding words that such postponement of process in case the accused residing at a place beyond the area, in which, learned Magistrate, exercise its jurisdiction, will not be applicable, in case the complaint is filed by a public servant acting or purporting to act, in discharge of his official duty, as the same has not been specifically mentioned in Section 202 of CrPC. Secondly, because in paragraph 40 in the case of **Union of India vs. Ashok Kumar Sharma (supra)**, as already emphatically quoted in the foregoing paragraphs of this judgment the Hon'ble Supreme Court of India has in no uncertain manner, has observed that the procedure in section 202 of the Code of Criminal Procedure regarding postponement of process is to be followed, in respect of the cases involving the offences punishable under the penal provisions of Drugs and Cosmetics Act, 1940.

13. Accordingly, this court is of the considered view that that in view of the undisputed fact that both the petitioners have been residing at a place beyond the area, in which, learned SDJM, Sahibganj

exercises its jurisdiction, hence certainly the impugned order dated 04.06.2015 passed in connection with OCR No. 161 of 2015, so far it relates to qua the petitioners; without requiring the mandatory provision of postponement of process as envisaged under section 202 of the Code of Criminal Procedure being not sustainable in law, is quashed and set aside.

14. Learned SDJM, Sahibganj may pass a fresh order in accordance with law.

15. This criminal miscellaneous petition is disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 10th June, 2024
Smita / AFR