

Neutral Citation No. - 2024:AHC:21101-DB

AFR

Reserved on: 1.11.2023

Delivered on: 7.2.2024

**In Chamber**

**Case :** CRIMINAL MISC. WRIT PETITION No. - 16248 of 2023

**Petitioner :** Keshav Kumar And 2 Others

**Respondent :** State Of U.P. And 3 Others

**Counsel for Petitioner :** Seema Singh Jadaun, Jitendra Pal Singh Jadaun

**Counsel for Respondent :** G.A., Ashok Kumar Singh Bais, Vineet Singh Parmar

**Hon'ble Vivek Kumar Birla, J.**

**Hon'ble Vinod Diwakar, J.**

*(Delivered by Hon'ble Vinod Diwakar, J.)*

1. We have heard Shri Nitin Bhasin, holding the brief of Shri Jitendra Pal Singh Jadaun, learned counsel for the petitioners, learned counsel for the informant, and Shri G.P. Singh, learned AGA for the State Respondents, and perused the record.

2. The present writ petition has been preferred to quash the impugned First Information Report dated 30.7.2023 as Case Crime No.419 of 2023, under Sections 420, 467, 468, 471, 504, 506 IPC, registered at P.S. Deoband, District Saharanpur, and for a direction to the respondent police not to arrest the petitioners till the pendency of the present petition. For clarity, the relevant portion of the prayer is underlined herein:

*“(i) Issue a writ, order or direction in nature of certiorari quashing the impugned First Information Report dated 30.07.2023 registered as Case Crime No. 419 of 2023, under Sections 420, 467, 471, 504, 506 of IPC, P.S. Deoband, District Saharanpur.*

*(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to not to arrest the petitioners in pursuance of First Information Report dated 30.07.2023 registered as Case Crime No. 419 of 2023, under Sections 420, 467, 471, 504, 506 of IPC, P.S. Deoband, District Saharanpur.”*

3. The prosecution case is that the respondent no.4/complainant

is in the health care business and had purchased 2000 injections from VADSP Pharmaceuticals, a third-party manufacturer company of the medicines. The said injections are used to develop antibiotics in children. After purchasing, the said injections were delivered for sale to Rastogi Hospital, Railway Road, Deoband, besides certain other medicines. After the use of the said injections, the doctor complained about the quality of the injections and stated that they are substandard and that if said injections are used, they could be injurious to the health of the children and pose a potential threat to their lives. The complainant immediately took back the entire stock from their distributors and hospitals and informed the accused-persons. The accused-persons/petitioners had clandestinely shown all parameters as correct in a certificate delivered along with the injections. The complainant also conducted a lab test from the Scientific Testing Lab, Roorkee, Haridwar on 19.9.2022, which suggests the sample of the injections failed. The petitioners were again informed about the substandard quality of the injections through e-mail. The petitioners again sent a DN Laboratory Report dated 26.9.2022, showing the report as per standard. The test report of the complainant did not match the test report supplied by the petitioners to the complainant. The complainant has fraudulently prepared and managed a test report dated 26.9.2022 issued by DN Laboratory to justify the quality of the injections. The impugned FIR was registered against the petitioners on the preceding set of allegations.

4. Aggrieved by the registration of the impugned FIR bearing Case Crime No.19 of 2023, under Sections 420, 467, 468, 471, 504, 506 IPC at P.S. Deoband, District Saharanpur, the petitioners have preferred the instant petition.

5. Learned counsel for the petitioners submits that the petitioner

nos.1 and 2 are partners in M/s Morgan Healthcare, situated at 1<sup>st</sup> Floor, Sam Building, Ratwara Sahib Gurudwara Road, Mullanpur, Kharar, Sas Nagar, who were granted license under the provisions of Drugs and Cosmetics Act, 1940 by the State Drug Licensing Authority, Punjab, whereas the petitioner no.3 is a partner in M/s VADSP Pharmaceuticals, having its office at Plot No.124 EPIP, Phase-1, Jharmajri, Baddi, District Solan, Himachal Pradesh, which has been granted a license to manufacture drugs under the provisions of the Act. The manufacturing company, i.e., petitioner no.3 was manufacturing the third-party drug “*Meropenem Injection IP (Merofy-125 Injection)*” from its unit. In the month of September, 2022, the respondent/complainant telephonically requested to take back the drugs in question and stated that the doctor did not prescribe the drug/injection in an open market, being injurious to the health of the children. As per the petitioner's own test reports, the injections were found to be of standard quality, and accordingly, the DN Laboratory issued a test report. Therefore, registration of the impugned FIR is a misuse of the process of law and also, in the teeth of the ratio culled out in **Union of India v. Ashok Kumar Sharma and other**<sup>1</sup>.

5.1 With oblique motive, the complainant malafidely filed an application under Section 156(3) Cr.P.C. before Id. A.C.J.M. Deoband, Saharanpur and secured an order for registration of the impugned FIR against the petitioners by concealing material facts from the court. He further contends that on perusal of the contents of the FIR, no offence under IPC is made out, and if at all any offence would attract then, the Drug Inspector is a competent person to initiate prosecutions against the petitioners; as no FIR could be registered under the IPC by the complainant, it is only the

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<sup>1</sup> (2021) 12 SCC 674

Drug Inspector who is authorized under Section 32 of the Act to initiate prosecution, if any. The Act specifically prohibits taking cognizance except on the complaint made by the Drug Inspector or other person authorised under the law, and to substantiate its argument the petitioners has relied upon Section 32 of the Act<sup>2</sup>. Section 32 of the said Act is reproduced below:

**“32. Cognizance of offences—**

*[(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 or 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.”*

5.2 The petitioner has placed reliance upon ***Chandan Singh v. State of Haryana***<sup>3</sup>, ***Rajeev Kumar v. State of Punjab***<sup>4</sup>, ***Ashish Kumar v. State of Haryana***<sup>5</sup>. He further relied upon ***Lalan Kumar Singh and another v. State of Maharashtra***<sup>6</sup> to substantiate that merely reproducing the ingredients of the penal provision without a clear statement of facts as to how and in what manner the Director of the company was responsible for the conduct of the business of

<sup>2</sup> Drugs and Cosmetics Act, 1940 (hereinafter referred to as the ‘Act’)

<sup>3</sup> (2004) 4 RCR (CrI) 724

<sup>4</sup> 1997 (4) RCR 846

<sup>5</sup> 2022 SCC Online P&H 2847

<sup>6</sup> 2022 SCC Online SC 1383

the company would not *ipso facto* make the Director vicariously liable in a criminal case. He further contends that a person in charge of and responsible for the affairs of the company for the day-to-day conduct of the business of the company, must be a person in overall control of the day-to-day business of the company or the firm. If a partner of a firm is not in such overall control, he cannot be liable to convicted merely because he had the right to participate in the business of the firm under the terms of the partnership deed<sup>7</sup>.

5.3 Simply because a person is the Director of the company, he does not vicariously become liable for the offence<sup>8</sup>.

5.4. While considering Section 34 of the Act, it was held that offences by the company and non-compliance of the provisions thereof if no whisper in the entire complaint made against the petitioners whether they were in charge of and were responsible for the conduct of the business at the time of the commission of the offence and the mere fact that the petitioner happens to be one of the partners does not entitles the prosecution to prosecute him<sup>9</sup>.

5.5. On the basis of the impugned FIR, the Drug Inspector has also issued notice; therefore, it would be a case of double jeopardy. Thus, the prosecution is liable to be quashed. The FIR under Section 420, 467, 468, 471, 504, 506 IPC is defective else for the same offence the remedy lies under Section 18 (A) (i) of the Act.

6. *Per contra*, learned AGA submits that there are serious

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<sup>7</sup> State of Karnataka vs. and others; (1981) 2 SCC 335

<sup>8</sup> State of Haryana v. Brij Lal Mittal; (1998) 5 SCC 343

<sup>9</sup> Ashok Kumar Tyari vs. State of H.P.; (2015) 1 Drugs Cases DC 185

allegations of manufacturing spurious and substandard drugs by the petitioners. The petitioners have also created forged and managed test reports to give an impression that the injections are of standard quality as per the standards reflected in the test report. He further contends that the manufacturing of substandard drugs allegedly to boost the immunity of the children amounts to the life and safety of the children, and no one could be permitted to manufacture substandard and spurious drugs. He further contends that the investigation is at the initial stage, the role of the petitioners is yet to be ascertained, and the petitioners are not cooperating with the Investigating Officer. The Investigating Officer required cooperation from the petitioners to extract the truth of the allegation. He further contends that there are serious allegations of manufacturing substandard, spurious drugs and creating forged test reports to give an impression of valid and standard quality drugs.

7. Reverting back to the petitioners' counsel's argument, who has heavily relied upon **Ashok Kumar Sharma case (supra)**, in which following issues were involved:

(i) what is interplay between the provisions of the Code of Criminal Procedure and the Drugs and Cosmetics Act, 1940?

(ii) whether in respect of offences falling under Chapter IV of the Drugs and Cosmetics Act, 1940, an FIR can be registered under Section 154 of the Cr.P.C. and the case investigated or whether Section 32 of the Drugs and Cosmetics Act, 1940 supplants the procedure for investigation of offences under Cr.P.C. and taking of cognizance of an offence under Section 190 Cr.P.C.?

(iii) whether the Drug Inspector has power or authority

to arrest a person in connection with an offence under Chapter IV of the Drugs and Cosmetics Act, 1940?

8. Chapter IV of the Act<sup>2</sup> deals with the manufacture, sale and distribution of drugs and cosmetics. Section 16 of the Act governs the expression (standard quality), whereas Sections 17, 17A and 17B govern misbranded, adulterated, and spurious drugs. The definition for the sake of clarity, the relevant sections are reproduced as under:

**“16. Standards of quality. -**

*[(1) For the purposes of this Chapter, the expression “standard quality” means—*

*(a) in relation to a drug, that the drug complies with the standard set out in [the Second Schedule], and*

*(b) in relation to a cosmetic, that the cosmetic complies with such standard as may be prescribed.]*

*(2) The [Central Government], after consultation with the Board and after giving by notification in the Official Gazette not less than three months’ notice of its intention so to do, may by a like notification add to or otherwise amend [the Second Schedule] for the purposes of this Chapter, and thereupon 5[the Second Schedule] shall be deemed to be amended accordingly.*

**[17. Misbranded drugs.—***For the purposes of this Chapter, a drug shall be deemed to be misbranded,—*

*(a) if it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is; or*

*(b) if it is not labelled in the prescribed manner; or*

*(c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.*

**17A. Adulterated drugs—***For the purposes of this Chapter, a drug shall be deemed to be adulterated—*

*(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or*

*(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or*

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<sup>2</sup> Drugs and Cosmetics Act, 1940

*(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or*

*(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or*

*(e) if it contains any harmful or toxic substance which may render it injurious to health; or*

*(f) if any substance has been mixed therewith so as to reduce its quality or strength.*

**17B. Spurious drugs.**—*For the purposes of this Chapter, a drug shall be deemed to be spurious,—*

*(a) if it is manufactured under a name which belongs to another drug; or*

*(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or*

*(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or*

*(d) if it has been substituted wholly or in part by another drug or substance; or*

*(e) if it purports to be the product of a manufacturer of whom it is not truly a product.”*

9. Section 32 of the Act<sup>2</sup> deals with conditions under which cognizance of the offences could be taken with respect to the offences committed within the purview of the Act, which says no prosecution under the Act shall be instituted except by- **(a)** an Inspector, or **(b)** any gazetted officer of the Central Government or a State Government authorised in writing on this behalf by the Central Government or a State Government or by a general or speaking order made on this behalf by that Government or **(c)** the person aggrieved or **(d)** a recognised consumer association, whether such a person is a member of that association or not.

10. Section 32(3) of the Act<sup>2</sup> further clarifies that nothing

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<sup>2</sup> Drugs and Cosmetics Act, 1940

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 under this chapter.

11. **Ashok Kumar Sharma (supra)** case originated from an online complaint dated 22.2.2018 made by one Naushad Khan in which the Commissioner (Food Protection and Drug) initiated an inquiry and the Drug Inspector Mau, U.P. along with two others conducted an inspection at Sharda Narayan Clinic and Pharmacy and the person, who was present in the clinic, was directed to show papers in respect of medicines stored in the shop. The person stated that he did not have any license, though he was the owner of the medical store, and that he had stored the medicines without proper license. He committed an offence under Sections 18 and 27 of the Act<sup>2</sup>. On the basis of the recovery made, an FIR was lodged under Section 18 (a)(i) and Section 27 of the Act<sup>2</sup> on the complaint of the Drug Inspector. Aggrieved by the same, the accused preferred a petition for quashing the FIR before this Court, and this Court allowed the writ petition and quashed the FIR on the reasoning that Section 32 of the Act<sup>2</sup> disabled the police from registering an FIR, as Section 32 of the Act<sup>2</sup> provides for the mechanism for prosecuting offences under the said Act. The said finding was challenged before the Supreme Court in **Ashok Kumar Sharma case (supra)**, and the Supreme Court culled out the directions, which are extracted below:

***“THE CONCLUSIONS/DIRECTIONS***

*170. Thus, we may cull out our conclusions/directions as follows:*

*170.1. 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.*

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<sup>2</sup> Drugs and Cosmetics Act, 1940

*170.2. 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.*

*170.3 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.*

*170.4. 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.*

*170.5. 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.*

*170.6. 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.*

*170.7. 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. Nonetheless, the consumer does not know about the manufacturer or quality of the products. Many times, they are unaware of expired, degraded or substandard products, which ultimately results in treatment failure and, with antibiotics, leads to anti-bacterial resistance. This problem is very serious and rapidly growing, causing serious repercussions on the health of the citizens.

The ingredients of Sections 16, 17, 17A, and 17B of the Act<sup>2</sup> mandate poor quality drugs comprising misbranded drugs, spurious drugs and adulterated drugs, respectively, and there is no provision in the Act<sup>2</sup> to deal with the offences related to the creation of forged documents and dishonestly uses as genuine.

13. The opening line of section 32 of the Act<sup>2</sup> states, “No prosecution under this Chapter shall be instituted by -” this means the offences under The Drugs and Cosmetics Act, 1940, and not under offence under the Indian Penal Code; therefore, the police can investigate the offences forming part of Penal Code. Sub-Section (3) of Section 32 further clarifies the position in unequivocal terms that nothing contained in Chapter IV of the Act<sup>2</sup> shall be deemed to prevent any person from being prosecuted under any other law for any act or omission that constitutes an offence against Chapter IV of the Act<sup>2</sup>.

14. Section 2 of the Act<sup>2</sup> states that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

At this juncture, it would be relevant to reproduce section 2 & 32(3) of the Drugs and Cosmetics Act, 1940, which are extracted herein below:

*“2. Application of other laws not barred. —The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930 (2 of 1930), and any other law for the time being in force.*

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*32. Cognizance of offences—*

*1.....*

*2.....*

*(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*

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<sup>2</sup> Drugs and Cosmetics Act, 1940

Chapter”

15. The conjoint reading of both the provisions make it clear that the provisions of the Act<sup>2</sup> do not have over ride effect on any other law in force. Its clear that the investigation under Code of Criminal Procedure for offences under IPC are not barred under the Drugs and Cosmetics Act, 1940.

16. The Delhi High Court in *Pankaj Kumar v. State*<sup>10</sup>, has held that the Code is the parent statute which provides for investigation, inquiry into, and trial of cases and unless there is specific provision in other statute to indicate a different procedure to be followed, the provisions of the Code cannot be displaced. The High Court has relied upon various judgments passed by the Supreme Court to come to the aforesaid conclusion. The relevant portion of *para-18* of **Pankaj Kumar’s case (supra)** is extracted herein below:

*“That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If High Court was of the opinion that investigation has to be conducted by the Bureau then also there was no need to quash the FIR Any way we take the view that as offences under the Penal Code, 1860 are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. Inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used “to give effect to any orders under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” It is quite unfortunate that learned single Judge overlooked the reality that by quashing the FIR in the case the High Court did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving ends of criminal justice, the impugned order would achieve the reverse of it.” (Emphasis supplied)*

17. The Delhi High Court in *HOECHST PHARMACEUTICALS v. C.V.S. Mani*<sup>11</sup>, has also held as under:

<sup>2</sup> Drugs and Cosmetics Act, 1940

<sup>10</sup> (2008) SCC OnLine Del 1384

<sup>11</sup> (1982) SCC OnLine Del 200

20. The Preamble of the Act, no doubt, says that it is an Act to regulate the import, manufacture, distribution and sale of drugs and cosmetics but the real object of this Act has been judicially examined on numerous occasions. In **Chimanlal Jagjivandas Sheth v. State of Maharashtra**<sup>12</sup>, while examining whether substances like absorbent cotton wool, roller bandages and gauze used for or in treatment of diseases fall within the ambit of the Act, it was observed that the Legislature designedly extended the definition of ‘drug’ so as to take in substances which are necessary aids for treating surgical or other cases. “The main object of the Act is to prevent sub-standards in drugs, presumably for maintaining high standards of medical treatment. That would certainly be defeated if the necessary concomitants of medical or surgical treatment were allowed to be diluted: the very same evil which the Act intends to eradicate would continue to subsist.”

21. Again, in **Indian Chemical and Pharmaceutical Works, Hyderabad v. The State of Andhra Pradesh**<sup>13</sup>, a Constitution Bench of Supreme Court held, “The Drugs Act, 1940, which mainly concerned with standard and quality of drugs manufactured in this country and, therefore, controls the manufacture, sale, and distribution of drugs has nothing to do with duties of excise and with their imposition on narcotics and narcotic drugs.”

22. From the above two observations of Supreme Court it becomes obvious as to what is the real object of the Act and what is the legislative scheme and policy of this enactment. Indeed, the Act as Section 2 lays down, is in addition to and not in derogation of any other law and the real purpose of the enactment is to ensure quality and standards of drugs manufactured, imported, distributed and sold in the country. If that be correct, as indeed it must be held to be, we have to read Section 12 and Section 33, giving the rule making power in the above context and of the provisions of Chapter III and Chapter IV of the Act. We have also to see that no rule is made under the Act which is violative of any other law or impinges upon any other right recognised or conferred by any other law. If a rule impinges upon any other law or any other right, it must be held to be outside the rule making power of the Central Government. Section 2 on the one hand and Sections 12 and 33 of the Act on the other have all to be read together, being part of the same enactment and part of the same legislative scheme.

18. The coordinate bench in the case of **Abhishek Kukreti and others v. State of U.P. and others**<sup>14</sup> has rejected the plea to quash the FIR stemming from Case Crime No.85 of 2023, involving sections 379, 411 IPC along with section 4/21 of the Mines and Minerals

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<sup>12</sup> A.I.R. 1963 S.C. 665

<sup>13</sup> A.I.R. 1966 S.C. 713

<sup>14</sup> Criminal Misc. Writ Petition No.11966 of 2023, decided on 9.8.2023

(Development and Regulation) Act, 1957, registered at Police Station Nagina Dehat, District Bijnor. The key issue addressed was whether section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 mandates FIR registration solely on the complaint of an authorized person or a private individual can also lodge an FIR when IPC offences are involved. The coordinate bench of this court clarified that there is no legal impediment under section 22 of the MMDR Act for a private individual to file an FIR for IPC offences related to transactions under the MMDR Act. It emphasized that the offences under both the Act's have distinct and different procedural investigative mechanisms.

19. We have very scrupulously gone through the material placed before us and are not persuaded to hold that the petitioner's case is covered by the **Ashok Kumar Sharma case (supra)**, and hence, the decision cited on this behalf can not be availed of. In *Ashok Kumar's* case, the FIR was registered on the complaint of the Drug Inspector with the police station for the offences mentioned in Chapter IV of the Act<sup>2</sup>; therefore, the court has held that the same is in the teeth section 32 of the Act<sup>2</sup>, but in the instance case, the complaint had been registered by a private person on the complaint of a consumer for creation of forged and fabricated lab test report to prove drugs in the question of standard quality. In essence, the gist of the allegation is that the petitioner has procured a false and fabricated lab report to make the complainant believe that the drugs are of standard quality.

20. In our view, on a reading of the impugned FIR, where there are allegations of the creation of fake test reports to give an impression of drug being of standard quality, as it has been pointed out earlier, the entire matter is only at nascent stage, and the investigation is not proceeded with except the registration of the

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<sup>2</sup> **Drugs and Cosmetics Act, 1940**

impugned FIR. The evidence has to be gathered after a thorough investigation and shall be placed before the Court on the basis of which alone the court can come to the conclusion one way or the other on the plea of right of the complainant to register the FIR. If the allegations are bereft of the truth and made with ulterior motives, we are sure the investigation will reflect so in the police report. At this stage, when there are only allegations of procuring false and fabricated test reports and investigation is at nascent stage, this Court cannot anticipate the result of the investigation and render a finding on the legality and correctness of the impugned FIR. Therefore, we are unable to see any force in the contentions raised by the petitioner's counsel based on the ratio culled out from **Ashok Kumar Sharma's case (supra)**. Needless to say, the question of *malafide* exercise of power will assume significance only if an authority acts for an unauthorized purpose. We are of the considered opinion that the principal purpose of the registration of the impugned FIR and the intended follow up action are only to investigate the allegations and present a case before the court. If sufficient evidence in support of those allegations is collected, and in case if no such evidence is collected, the police may file the police report, accordingly.

21. More precisely, in the instant case, the prosecution case is that the accused first delivered the substandard injections and, thereafter, to give an impression of standard quality, provided a fake lab report issued from DN Laboratory, therefore, there are allegations of the creation of forged laboratory reports. Albeit, on giving a bird's eye view of the ingredients of Sections 16, 17, 17A, and 17B of the Act<sup>2</sup>, it would safely be concluded that these sections deal with the definition of standard quality, misbranded, adulterated and spurious drugs, not with the creation of forged

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<sup>2</sup> Drugs and Cosmetics Act, 1940

documents and using as genuine. Therefore, the element of forgery could only be investigated by the police under the provisions of Indian Penal Code and not under the Chapter IV of the Drugs and Cosmetics Act, 1940. Moreover, police must record every information related to the commission of cognizable offence in the register kept at police station; it ensures that the process is initiated promptly upon receipt of information regarding the commission of cognizable offence. It only brings the alleged offence to the notice of the police and sets in motion the machinery for the investigation of the case. The registration of an FIR is mandatory under Section 154 of Cr.P.C. if the information discloses a cognizable offence<sup>15</sup>.

22. In view of the fact that substandard drugs encounter a major stringent issue for the health system and cannot be ignored. The investigation is at the initial stage, and there are specific allegations of the creation of forged test lab reports to claim substandard drugs of standard quality; therefore, on perusal of the contents of the impugned FIR, the ingredients of commission of cognizable offence are *prima- facie* made out.

23. The allegations made in the impugned FIR, in our considered opinion, do clearly constitute a cognizable offence justifying the registration of a case and the investigation thereon, and this does not fall under any of the categories of cases formulated by the Supreme Court in *State of Haryana v. Bhajan Lal*<sup>16</sup>, calling for the exercise of extraordinary or inherent powers of the High Court to quash the impugned FIR. Otherwise also, it is not the case of the petitioners that even if the allegations made in the FIR/complaint, is taken at their face value and-accepted in their entirety, do not *prima facie* constitute any offence or make out a case, against the accused. The petitioners have also not pleaded any express bar engrafted in

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<sup>15</sup> *Lalita Kumari vs. State of U.P.*; (2014) 2 SCC 1

<sup>16</sup> 1992 Supp (1) SCC 335

any provisions of the Code or any other law, including the Drugs and Cosmetics Act, to the institutions and continuance of the proceedings.

24. Therefore, the petition is devoid of merits, and hence dismissed, at this stage.

**Order Date:-** 7.2.2024

Anil K. Sharma

[Vinod Diwakar, J.] [Vivek Kumar Birla, J.]