

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

2023:PHHC:158379

CRM-M-23951-2022

Reserved on: November 21st, 2023

Pronounced on: December 7th, 2023

Gaurav Chawla

.....Petitioner

Versus

State of U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vinod Ghai, Senior Advocate
with Mr. Arnav Ghai
and Mr. Amritpal Singh Maan, Advocates
for the petitioner.

Mr. Amit Kumar Goyal, Additional Public Prosecutor,
U.T. Chandigarh.

MANJARI NEHRU KAUL, J.

Petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing of FIR No.56 dated 18.04.2021 under Sections 420, 120-B of the IPC and Section 7 of Essential Commodities Act and Section 27 of The Drugs and Cosmetics Act registered at Police Station Sector 17, Chandigarh and all consequential proceedings arising therefrom.

2. Learned senior counsel appearing for the petitioner, *inter alia*, has made the following assertions:-

(i) That the petitioner has been falsely implicated in the case in hand as neither was he named in the FIR in question nor was he present during the police raid at Hotel Taj, Sector-17, Chandigarh. He was arraigned as an accused only in his capacity as a Director of M/s Health Biotech Limited, Baddi, Himachal Pradesh (hereinafter referred to as 'company').

(ii) That the essential ingredients for attracting the offence of

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cheating under Section 420 of the IPC are not made out as there was no allegation levelled in the FIR against the petitioner of having delivered any property or having practiced deception upon any person. Merely being in possession of a request letter addressed to the Government of Himachal Pradesh, seeking permission to sell Remdesivir injections (hereinafter referred to as 'injections') in the domestic market, would not qualify as an offence of cheating under Section 420 of the IPC.

(iii) That allegedly on 16.04.2021, the company despatched 11000 injections to Hindaz Corporation, Thane, Maharashtra, despite there being a ban imposed by the Government of India on their export. These injections, however, had been manufactured by the company before the notification of the Government. Due to the ban imposed by the Government, they were returned to the company and did not reach their intended destination. In support, learned senior counsel has further drawn the attention of this Court to Annexure P-15 and asserted that it was not even the case of the prosecution that these injections were meant to be exported out of India.

(iv) That allegedly the police seized a single vial of injection from one Abhishek, during the raid conducted at Hotel Taj, Chandigarh. Additionally, 3000 more injections were subsequently seized from the company's factory at Baddi. That under Section 22 of The Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act'), the power to conduct any search and seizure vested solely with the Drug Inspector. Any potential prosecution against an accused/petitioner could have only been initiated based on a complaint filed by the Drug Inspector. However, since an FIR had been registered under the Act, it was *per se* not maintainable in view of the bar of Section 32 of the Act. Hence, the

entire search and seizure was illegal and had been carried out by the police by clearly exceeding its jurisdiction.

(v) That even for offences under Essential Commodities Act, the police was not empowered to seize any drugs. Since the Drugs and Cosmetics Act was a special law, wherein the power of seizure had been granted only to the Drug Inspector, it would take precedence over the general provisions of Essential Commodities Act. In support, learned senior counsel has placed reliance upon *Atul Garg Versus State of Punjab 2012 (3) R.C.R. (Crl.) 936*.

(vi) That even otherwise, the State had miserably failed to demonstrate any violation of either The Drugs and Cosmetics Act or the Essential Commodities Act as it was a matter of record that the company was holding a valid licence to produce and store the injections as was apparent from Annexure P-4. Furthermore, it was not even the case of the prosecution that the petitioner had sold the injections in the domestic market; rather the criminal proceedings by way of the instant FIR had been initiated against the petitioner solely on an assumption that the injections, seized during the raid by the police, might have been sold in the future, domestically without any licence.

3. Learned counsel for the respondent-U.T. Chandigarh while opposing and controverting the submissions made by learned senior counsel for the petitioner has argued that all the accused connived with each other and deceitfully enticed Pushkar Chander Kant and Pankaj Sharma by offering them injections for sale even though the company was not holding any valid licence/permit to sell the injections in the local market. Furthermore, it has been pointed out by the State that this was not an isolated incident; on 16.04.2021, the company had shipped

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11000 injections to Hindaz Corporation, Thane, Maharashtra, even though the Government of India had banned their export on 11.04.2021 i.e. five days prior thereto. Additionally, it was also a matter of record that the company had received an advance payment in the sum of Rs.10 lakhs on 12.04.2021 with respect to the consignment of the aforementioned injections which were to be shipped to Hindaz Corporation, Thane, Maharashtra.

4. Learned State counsel has further asserted that a specific secret information had been received and it was only thereafter, a raid was carried out at Hotel Taj, Chandigarh, where all the accused persons were apprehended red handed attempting to finalize the sale of injections without the requisite licence/permit to sell in the domestic market. The State counsel has contended that at the time of the raid, a request letter from the company along with a box containing four vials of white powder were recovered from one Sunil Kumar, from which it was discernible that all the accused persons were in the process of finalizing an illegal deal with respect to the banned injections. Learned State counsel has further submitted that no doubt, the petitioner was not found present along with the co-accused at Hotel Taj on 18.04.2021, however, since the petitioner was a Director of the company and recovery of 3000 injections was effected from their factory premises at Baddi, it clearly suggested that the seized injections in all likelihood would have been sold without proper permit/licence in the domestic market, had the police not arrived at the spot i.e. Hotel Taj, Chandigarh, and apprehended the accused.

5. It has lastly been vehemently contended that at this stage, more so, when the challan stands presented, the inherent jurisdiction of

this Court under Section 482 Cr.P.C. cannot be invoked to test the truthfulness or otherwise of the allegations levelled in the FIR in question; instead the case of the petitioner would be addressed during trial when evidence would be led by both the sides, which would then be tested on the touchstone of cross-examination. Learned State counsel, while concluding his submissions, has vehemently reiterated the allegations levelled in the FIR against the petitioner and has submitted that a bare perusal of the allegations levelled therein did *prima facie* make out a case against the petitioner that he had every intention to sell the injections deceptively being fully aware that there was a ban on their sale, and thus, the mischief of not only Section 420 of the IPC was *prima facie* made out but even offences under Section 7 of the Essential Commodities Act and Section 27 of The Drugs and Cosmetics Act was attracted in the present case against the petitioner.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. In the present case, the petitioner has been challaned to face trial under Sections under Sections 420, 120-B of the IPC and Section 7 of Essential Commodities Act and Section 27 of The Drugs and Cosmetics Act. Therefore, before proceeding further, it would be necessary to examine as to whether the FIR as well as the material collected by the police during investigation discloses the commission of the offences, alleged, or not.

8. The petitioner has allegedly committed an offence under Section 420 of the IPC, which, for the facility of reference is reproduced hereinbelow:-

“Section 420. Cheating and dishonestly inducing

delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. Section 420 of the IPC addresses cheating by inducing someone, through false claims, to deliver property, alter valuable securities, or perform actions they would not have done otherwise. The key to proving an offence under Section 420 of the IPC requires not only deliberate false representation but also the knowledge of the accused of its falsehood and the intent to deceive. Dishonest intent is pivotal, and transactions must involve fraudulent intentions, mere breach of agreement would not qualify as a criminal offence under Section 420 of the IPC.

10. In the instant case, Pushkar Chander Kant and Pankaj Sharma in their statements recorded under Section 161 of the Cr.P.C. had stated that accused Abhishek, K.P. Fransic, Philip Jacob, Susheel Kumar, Gaurav Chawla and Prabhat Tyagi purportedly offered to sell them injections at prices exceeding the regulated rate, without being in possession of any requisite licence or permit and thus, tried to cheat them, so that they could earn huge profits through illicit black marketing of these injections. In addition, as per the statements made by both of them under Section 161 of the Cr.P.C., upon inquiry, when the accused were asked to show any authorization to sell the injection, the accused

evaded providing them with any licence or permit. Hence, from a perusal of their statements under Section 161 of the Cr.P.C., it is discernible that the accused, who was apprehended from Taj Hotel at Chandigarh had neither succeeded in deceiving Pushkar Chander Kant and Pankaj Sharma nor were the accused able to induce them into transferring/delivering any property etc. It has also not been disputed by the learned counsel for U.T. Chandigarh that there are no allegations against the petitioner of actually having sold the injections in the domestic market. Thus, the essential elements to attract the mischief of an offence under Section 420 of the IPC are evidently absent in the case in hand.

11. Furthermore, the petitioner while acting in his capacity as the Director of company was neither apprehended at the hotel along with the co-accused nor was there any material collected during investigation or even any averment made in the complaint indicating his collusion or connivance with the co-accused, who were apprehended at Hotel Taj. Consequently, given the absence of the essential elements to sustain an offence under Section 420 or 120-B of the IPC, the evidence and material gathered by the investigating agency does fail to disclose the commission of an offence under the aforesaid two Sections.

12. Furthermore, with regard to the alleged violations under Section 7 of Essential Commodities Act and Section 27 of The Drugs and Cosmetics Act, it was vehemently contended by learned senior counsel for the petitioner that the police could neither have seized the injections nor could it have investigated the case, as only an officer authorized under The Drugs and Cosmetics Act could have done so.

13. The central issue, therefore, to be determined is whether the

police possessed the power to seize the injections and conduct investigation with respect to offences under Chapter IV of The Drugs and Cosmetics Act read with Section 7 of the Essential Commodities Act, for facility of reference, Section 7 and Section 3 (1) of the Essential Commodities Act and Schedule 2A of the Essential Commodities Act is reproduced as under:-

“7. Penalties.—1 [(1) If any person contravenes any order made under Section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be

less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be. 2

[(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be

specified by the Court in the Order.]

“3. Powers to control production, supply, distribution, etc., of essential commodities.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, 1 [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.”

“[THE SCHEDULE

(See section 2A)

ESSENTIAL COMMODITIES

(1) drugs.

Explanation.—For the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940;”

The Essential Commodities Act lays down provisions designed to regulate and oversee the production and distribution of essential commodities encompassing drugs also. Conversely, The Drugs and Cosmetics Act constitutes a distinct and special legislation exclusively intended to provide regulatory provisions governing the production and distribution of pharmaceutical drugs.

14. In the instant case, the alleged contravention of the provisions outlined in The Drugs and Cosmetics Act have attracted the applicability of Section 7 of the Essential Commodities Act. Consequently, the procedure laid down under The Drugs and Cosmetics Act would supersede the general provisions of the Essential Commodities Act.

15. Given the fact that the present case involves alleged illegal manufacture and sale of injections, the power to seize such injections unequivocally would rest with the Inspector appointed under The Drugs and Cosmetics Act as provided under Section 22, reproduced hereinafter:-

16. Section 22 of The Drugs and Cosmetics Act reads as under:-

22. Powers of Inspectors.—(1) *Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,—*

(a) inspect,—

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic, —

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,—

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter

has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed,

and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;

(cc) examine any record, register, document or any other material object found 2 [with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

(2) The provisions of 4 [the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as

they apply to any search or seizure made under the authority of a warrant issued under 5 [section 94] of the said Code.

(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter 1 [or refuses to produce any record, register or other document when so required under clause (cca) of sub-section (1),] he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.”

As delineated in the aforementioned reproduced provisions, it is evident that the police had no authority to inspect the premises and confiscate the injections as had been done in the present case. The Drugs and Cosmetics Act, being a special enactment supersedes the Cr.P.C. and Essential Commodities Act, thereby precluding the police from taking refuge under the Cr.P.C. or Essential Commodities Act to usurp the authority of a Drugs Inspector.

17. Any search and seizure not conducted in accordance with law, as seen in the instant case, would hold no weight during trial for convicting the accused based on such evidence. Therefore, owing to the defective recovery process, there would arise no possibility of imposition of penalty under Section 7 of Essential Commodities Act.

18. Furthermore, even the offence under Section 27 of The Drugs and Cosmetics Act is *prima facie* not made out. In this

regard, it would be pertinent to refer to the observations made by the Hon'ble Supreme Court in *Criminal Appeal No.200 of 2020* tilted as *Union of India Versus Ashok Kumar Sharma and others* decided on 28.08.2020, wherein it has been categorically held as under:-

“150. Thus, we may cull out our conclusions/directions as follows:

I. XXXX XXXX XXXX

II. XXXX XXXX XXXX

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, 1973 in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.”

Hence, it is abundantly clear that the police had no power to conduct investigation qua offences under Section 27 of The Drugs and Cosmetics Act, and even the FIR could not have been registered under the said provisions.

19. As a sequel to the above discussion, this Court has no hesitation to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and quash the FIR in question qua the petitioner.

20. The petition is accordingly allowed and FIR No.56 dated 18.04.2021 under Sections 420, 120-B of the IPC and Section 7 of Essential Commodities Act and Section 27 of The Drugs and Cosmetics Act registered at Police Station Sector 17, Chandigarh and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

December 7th, 2023

Puneet

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No