

In the Court of Addl. Sessions Judge-I, Patna.

Sessions Trial No. 234/2023

29-09-2023

Sole Accused Mukesh Kant is represented u/s 317 Cr.P.C. Ld. A.P.P filed attendance. Heard both parties on the discharge petition, dated 20.06.2016 filed on behalf of accused petitioner namely Mukesh Kant u/s 227 Cr.P.C. The petitioner has been named as an accused in the above mentioned case arising out of Pirbahore P.S. Case No. 168/2013, dated 06.05.2013 u/s 419,420,488,489,469,379,276 of the I.P.C and 27(b)(ii),22(3),27(d),28(a),22(i)(d)/2 of Drug & Cosmetics Act.

The ld. counsel for the petitioner while pressing the discharge petition submitted that the informant has stated in his written report that the proprietor of the shop absconded after closing his shop and the same was sealed and again it is stated that at the same date and time the workers of said shop were seen while they were taking away the medicines and even after contacting the proprietor, he did not appear at the place of inspection. Hence it is crystal clear that false and fictitious story has been created by the informant. It has been further submitted that as per allegation that the shop was sealed on 13.03.2013 and it was inspected on 06.05.2013 i.e. after more than 1 and a half months with a view to unseal the shop in presence of appointed Magistrate Shailendra Kumar Sinha and other police officers, it was found that the original seal was damaged. Here the question arises as to who is responsible for this act since right from 13.03.2013 to 06.05.2013 there was no such complaint against the petitioner and except suspicion there is nothing against the petitioner. That as for offence u/s 27(b)(ii) is concerned it is not the case of the petitioner since the petitioner has got valid licence. It has been further submitted that as for offence u/s 22(3) is concerned it clearly says if any person willfully abstracts an inspector in exercise of the powers conferred upon him by or under this chapter or refuses to produce any record, register or other document when so required but here in this case the petitioner was never asked to produce any record or register rather at a time his shop was sealed, hence offence u/s 22(3) is also not made out against the petitioner. It has been further submitted that in this case the act of the informant is beyond his jurisdiction vide sub section (c) of section 22 as the informant is not authorized under this section to keep on the seal of the shop left for more than 20 days but here in this case the shop was kept sealed for more than 1 and a half months. It has been further submitted that apart from above mentioned offence the informant has also added section 419,420,488,489,468,379 and 276 of Indian Penal Code are not made out since the petitioner had valid licence maintains books of account and there is no evidence that he damaged the seal since the place of occurrence is a public place and thousands of people walks every day through the said place of occurrence.

Learned counsel for the state vehemently opposed the discharge petition filed on behalf of the petitioner and submitted that the Hon'ble High Court, Patna in CWJC Nos. 887 and 889 of 2013 (**Bablu @ Rajesh Kumar vs. The State of Bihar and others**) and Cr. WJC No. 899 of 2012(**Chotelal Singh vs. The State of Bihar and others**) has held in Para No. 90 " In the FIRs instituted in respect of the offences under Chapter III

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continue.. and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma and where investigation has been completed and cognizance has been taken by the court and the cases have travelled beyond the stage of cognizance shall be saved and the prosecution shall continue as per the provisions prescribed under the Cr.P.C and prayed to reject the discharge petition of the petitioner in light of the above ruling of the Hon'ble High Court, Patna. It has been further stated by the spl. P.P. for the state that there is sufficient material on record to frame the charge against the petitioner and prayed to reject the discharge petition filed on behalf of the petitioner.

Heard the ld. counsels of both the parties and perused the record. From perusal of the record it transpires that in support of the allegation levelled against the petitioner there is sufficient material on the record to frame the charge against the petitioner. Moreover in the case of CWJC Nos. 887 and 889 of 2013 (**Bablu @ Rajesh Kumar vs. The State of Bihar and others**) and Cr. WJC No. 899 of 2012(**Chotelal Singh vs. The State of Bihar and others**) the Hon'ble Court has held in Para No. 90 " In the FIRs instituted in respect of the offences under Chapter III and IV of the Drugs and Cosmetics Act, 1940 prior to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sharma and where investigation has been completed and cognizance has been taken by the court and the cases have travelled beyond the stage of cognizance shall be saved and the prosecution shall continue as per the provisions prescribed under the Cr.P.C.

Hence in above facts & circumstances the discharge petition filed on behalf of the accused is rejected. He is directed to present in person for framing of charge on 10.10.2023.

A.D.J-I, Patna.

