

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 420 of 2023

1. Mahesh Chandra Sharma @ Mahesh Chandra Sahstri, s/o late Ramnarayan Shastri, age 76 years
2. Tapan Sharma, s/o Mahesh Chandra Sharma @ Mahesh Chandra Sahstri, age 34 years
3. Naman Sharma, s/o Anand Mohan Sharma age 33 years
All director, M/s Rusoma Laboratories Pvt. Ltd., 149, Bhamori, P.O. & P.S.-Rau, Dist.-Indore (Madhya Pradesh) All residential Add: 5/5, New Palasia, P.O. & P.S.-Palasia, Dist.-Indore (Madhya Pradesh)

.... Petitioner

Versus

1. The State of Jharkhand
2. Sumant Kumar Tiwary, s/o not known to the petitioners, Office Address:-Drugs Inspector, Office of Drugs Inspector, Rajendra Nagar, P.O. +P.S.- Sakchi, Town-Jamshedpur, Dist.-East Singhbhum (Jharkhand)

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Amit Kumar, Advocate
For the State	: Mr. V.K. Vashistha, Spl. P.P.

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with a prayer for quashing the entire criminal proceedings as well as the order taking cognizance dated 10.01.2014 passed in connection with C2 Case No. 22 of 2014 which has been lodged involving the

offences punishable under Section 17, 18 (a) (i) and 27 (d) of the Drugs and Cosmetics Act, 1940.

3. The brief fact of the case is that the Drug Inspector, East Singhbhum, Jamshedpur on 21.12.2012 inspected Gurunanak Hospital & Research Center, Jamshedpur and collected samples of Glytol injection and send the same to government analyst Jharkhand State Testing Laboratories. It was found that batch number, manufacturing date and expiry date is not legible on the outer label of the drug and after considering it as misbranded drug, the said hospital was directed not to sale the said drug and to furnish the sale and purchase register. The sale register of the hospital showed that the same was purchased by M/s. Rolex Enterprises, Jamshedpur and was manufactured by M/s. Rusoma Laboratories Pvt. Ltd., Indore. The undisputed fact remains that the petitioners are resident of Indore in the state of Madhya Pradesh whereas, the trial court is situated at Jamshedpur in the State of Jharkhand.

4. Learned counsel for the petitioners submits that since the petitioners are residing in a place beyond the area, in which, learned Judicial Magistrate 1st Class, Jamshedpur who has issued the process against the petitioners, was exercising his jurisdiction, hence, the learned Judicial Magistrate 1st Class, Jamshedpur 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 the learned Judicial Magistrate 1st Class, Jamshedpur having not done so, and instead of either enquiring the case himself, or directing an investigation to be made by a police officer, having ordered for issue of the summons after taking cognizance basing upon the complaint filed, the same is not sustainable in law. In order to buttress his submission, learned counsel for the petitioners, relies upon the judgment of this Court in the case of **M/s. Zee Laboratories Limited & Anr. Vs. The State of Jharkhand & Anr.** reported in **2024:JHHC:21280** wherein, this Court relied 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 and circumstances of that case, where the complaint case involved the offences punishable under Section 403 and 406 of the Indian Penal Code, 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 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 complaint. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

5. Learned Special Public Prosecutor on the other hand vehemently opposes the prayer of the petitioners.
6. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, as mentioned in Section 202 of the Cr.P.C. that in case the accused person resides outside the local jurisdiction of the court, which issues the process, the court should postpone the process. The undisputed fact remains that the complaint was filed in the court of learned Chief Judicial Magistrate, Jamshedpur which upon being transferred have been received by the learned Judicial Magistrate 1st Class, Jamshedpur and the petitioners are not residing within the local limits of jurisdiction of the learned Judicial Magistrate 1st Class, Jamshedpur; as they are admittedly the residents of State of Madhya Pradesh. Therefore, in view of the principle of law settled by the Hon'ble Supreme Court of India in the case of **Union of India vs. Ashok Kumar Sharma (supra)**, since, if the accused is residing at a place beyond the area in

which, learned Magistrate concerned exercises its jurisdiction, in such a case, the process be postponed. The learned Magistrate has committed an illegally by not postponing the process, when undisputedly the petitioners were the residing outside his jurisdiction.

7. Therefore, this Court is of the considered view that in view of this undisputed fact that the petitioners have been residing at a place beyond the area, in which, learned Judicial Magistrate 1st Class, Jamshedpur exercises its jurisdiction, hence certainly the impugned order dated 10.01.2014 passed in connection with C2 Case No. 22 of 2014, so far it relates to the petitioners wherein, cognizance having been taken without adhering to the mandatory provision of postponement of process as envisaged under section 202 of the Code of Criminal Procedure is liable to be quashed and set aside.
8. Accordingly, the order dated 10.01.2014 passed in connection with C2 Case No. 22 of 2014 being not sustainable in law, is quashed and set aside.
9. Learned Judicial Magistrate 1st Class, Jamshedpur may pass a fresh order in accordance with law.
10. This criminal miscellaneous petition is disposed of with the aforesaid direction.

(Anil Kumar Choudhary, J.)