

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2480 of 2019

1. Priya Shankar Dasgupta, aged about 64 years, S/o Mr. Shanti Kumar Dasgupta, Director, Timken India Limited, residing at J-1810, Chittaranjan Park, P.O. & P.S. & District-New Delhi-110019.
2. Jay Swaroop Pathak @ Jai Swarup Pathak, aged about 60 years, S/o Mr. Raghunandan Swarup Pathak, Director, Timken India Limited, presently residing at Block-10 Draycott Park, Draycott 8, 14-08, P.O. + P.S.-Tanglin, Singapore, 259405.
3. Niroop Kumar Mahanty @ Niroop Mahanty, aged about 69 years, S/o Mr. Gouranga Chandra Mahanty, Director, Timken India Limited, 39, Circuit House Area, Jamshedpur-831001, presently residing at No.201, Neel House, Road No.5, 12 Circuit House Area, P.O. & P.S.-Bistupur, Town-Jamshedpur, District-East Singhbhum (Jharkhand).
4. Deepak Rastogi, aged about 52 years, S/o Mr. Mahendra Mohan Rastogi, Director, Timken India Limited, A 404, Mantri Classic Apartments, First Main, Eighth Cross, Bed Layout, Koramangala, Bangalore-560034, presently residing at G1201, One North, Next to Gold Gym, Near Magarpatta City, P.O. + P.S.-Hadapsar, Pune-411028.
5. James Ronald Manning @ James R. Menning, aged about 60 years, S/o Mr. James Althouse Menning, Director, Timken India Limited, P.O. + P.S. Box-244 North Sutton NH 03260 USA.
6. Sanjay Koul, aged about 55 years, S/o Mr. Kanhaya Lal Koul, Managing Director, Timken India Limited, Yangtze River International Garden, 48# Wuxi City, Jangsu Province, 214023 China, presently residing at AA-05, Concorde Silicon Valley, Doddathogur Village, Begur Hobli, P.O.-South Taluk, P.S.-

Electronic City Phase-1, Bangalore-560100.

7. Soumitra Hazra, aged about 60 years, S/o Mr. Ajay Pada Hazra, Secretary, Timken India Limited, DLX-63, Carnation, Ahiana Garden, Sonari, Jamshedpur-831011, presently residing at 8051, Sobha Daffodill, 24th Main, 2nd Sector, HSR Layout, P.O.-Somasundarapalya, P.S.-Bandeapalya Bangalore-560102.
8. Dr. Shaheed Uzzamane @ Dr. S.U. Zama @ Dr. S.U. Zaman, aged about 55 years, S/o Late Mr. Masihuzzaman, MO. I/C, Dispensary, Ms. Timken India, Bara, Jamshedpur presently residing at Ak/3, AK Apartment, Razzaque Colony, Dhatkidih, P.S.+ P.O.-Kadma, Jamshedpur 831001.
9. Dinesh Singh, aged about 52 years, S/o Late Mr. T.P. Singh, Divisional Manager, H.R., Ms. Timken India Limited, Bara, Jamshedpur presently residing at No.6 Kaiser Bungalow, Kapali Road Kadma, P.O. + P.S.-Kadma, Jamshedpur 831005.

... Petitioners

Versus

1. The State of Jharkhand
2. Sumant Kumar Tiwary, S/o not known to the petitioners, Drugs Inspector, Jamshedpur, P.O. & P.S.-Jamshedpur, Town-Jamshedpur, District-Singhbhum East (Jharkhand).

... Opposite Parties

For the Petitioners : Mr. Amit Kr. Das, Advocate
For the State : Mr. Fahad Allam, Addl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. Though, notice has validly been served upon the opposite party no.2, yet no one turns up on behalf of the opposite party no.2 in spite of repeated calls.

3. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to quash and set aside the entire criminal proceeding in connection with C/2 Case No.42 of 2014 including the order dated 15.03.2014 passed by learned Judicial Magistrate-1st Class, Jamshedpur whereby and where under the learned Judicial Magistrate-1st Class, Jamshedpur has taken cognizance of the offences punishable under Section 18 (c) of the Drugs and Cosmetics Act, 1940 against the petitioners.

4. Learned counsel for the petitioners submit that the allegation against the petitioners is that the petitioners stocked, sold and distributed the schedule-H drugs without obtaining a drug license, in violation of Section 18 (c) of the Drugs and Cosmetics Act, 1940 and Rule-6 of the rules thereunder. It is next submitted that there is no allegation that the complainant-Drug Inspector seized any drug nor he prepared any list of drugs which were found to be sold, stocked or distributed. It is next submitted that there is an inordinate delay of 17 months from the date of inspection, for filing the complaint.

5. Learned counsel for the petitioners relied upon the judgment of Hon'ble Supreme Court of India in the case of **State of Haryana vs. Brij Lal Mittal and others** reported in (1998) 5 SCC 343, in paragraph-8 of

which it has been held that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises, if at the material time he was in charge of and was also responsible to the company, for the conduct of its business and simply because a person is a director of a company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable.

6. Learned counsel for the petitioners next submit that there is absolutely no allegation against any of the petitioners that they were in charge of and responsible for the company, nor the company has been arrayed as an accused. It is next submitted that mere possession of the drugs will not attract the penal provision under Section 18(c) of the Drugs and Cosmetics Act, 1940. It is next submitted that the learned Judicial Magistrate-1st Class, Jamshedpur has committed a grave illegality by not conducting an enquiry as contemplated under Section 202 of the Code of Criminal Procedure.

7. In view of the undisputed fact that six of the accused persons were not residing in Jharkhand and were residing outside the local jurisdiction of the court concerned, the learned counsel for the petitioners relying upon the judgment of this Court in the case of **M/s Zee Laboratories Limited and Another vs. State of Jharkhand and Another** in Cr.M.P. No.144 of 2022 dated 10.06.2024, para-12 of which reads as under :-

“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."

submits that the learned Judicial Magistrate-1st Class, Jamshedpur

has committed a grave mistake by not following the mandatory

requirement of law, of postponement of process as envisaged under Section 202 of the Code of Criminal Procedure.

8. Learned counsel for the petitioners next relies upon the judgment of Hon'ble Supreme Court of India in the case of **Mohd. Shabir vs. State of Maharashtra** reported in (1979) 1 SCC 568 and submits that therein the Hon'ble Supreme Court of India has held that in order to prosecute a person for the offence punishable under Section 18(c) of the Drugs and Cosmetics Act, 1940, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act, paragraph-4 of which reads as under:-

"4. On an interpretation of Section 27, it seems to us that the arguments of Mr Singh are well founded and must prevail. The words used in Section 27, namely, "manufacture for sale", "sells", have a comma after each clause but there is no comma after the clause "stocks or exhibits for sale". Thus the section postulates three separate categories of cases and no other: (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted. In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr Khanna appearing for the State, however, contended that the word "stock" used in the section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of Section 27. We,

therefore, hold that before a person can be liable for prosecution or conviction under Section 27(a)(i)(ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant."
(Emphasis supplied)

In this respect, the learned counsel for the petitioners also relies upon the judgment of Hon'ble Supreme Court of India in the case of **Sk. Amir vs. State of Maharashtra** reported in (1974) 4 SCC 210.

9. Learned counsel for the petitioners next relies upon the judgment of Hon'ble Supreme Court of India in the case of **Lalankumar Singh and Others vs. State of Maharashtra** reported in 2022 SCC OnLine SC 1383 wherein the Hon'ble Supreme Court of India has held that in the absence of any specific averments in so far as the appellants before the Hon'ble Supreme Court of India were concerned, the Hon'ble Supreme Court of India allowed the prayer for quashing of criminal proceeding. It is lastly submitted that the prayer as prayed for in this Cr.M.P., be allowed.

10. Learned Addl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioners made in the instant Cr.M.P and submits that the allegations against the petitioners are sufficient to constitute the offence punishable under Section 18(c) of the Drugs and Cosmetics Act, 1940. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

11. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here, as has been held by this Court in the case of **M/s Zee Laboratories Limited and Another vs. State of Jharkhand and Another (Supra)** and as has been held by the Hon'ble Supreme Court of India in the case of **Union of India vs. Ashok Kumar Sharma** reported in **AIR 2020 SC 5274** in para-40 that 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.

12. Now coming to the facts of the case, the undisputed facts remains that six of the persons are admittedly residing outside the jurisdiction of the learned Judicial Magistrate-1st Class, Jamshedpur, so the learned Judicial Magistrate-1st Class, Jamshedpur before proceeding in the case against them, ought to have postponed the process but having not done so and instead by straightway taking cognizance of the offences and issuing summoning order in respect of at least six persons, who were residing outside his jurisdiction, without postponement of process is not sustainable in law. Otherwise, also the only allegation against the petitioner is of stocking certain medicines, the name or quantity of which has not been disclosed anywhere in the complaint. There is no allegation that the Timken India Limited with which the petitioners are alleged to be associated, is producer of any drugs or cosmetics and the only allegation

against them are stocking the same and there is no allegation against them of stocking the medicines for sale.

13. Under such circumstances, this case being a case of stock of medicines only without any allegation of either manufacturing the same for sale of the same, the offence punishable under Section 18(c) of the Drugs and Cosmetics Act, 1940 is not made out against the petitioners, even, if the entire allegations made against the petitioners are considered to be true in their entirety, thirdly, there is absolutely no allegation against any of the petitioners as to at which relevant time, who was in charge and was responsible for company for the conduct of the business and on this score, also the prosecution is bad in law.

14. In view of the discussion made above, this Court is of the considered view that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceeding in connection with C/2 Case No.42 of 2014 including the order dated 15.03.2014 passed by learned Judicial Magistrate-1st Class, Jamshedpur, be quashed and set aside.

15. Accordingly, the entire criminal proceeding in connection with C/2 Case No.42 of 2014 including the order dated 15.03.2014 passed by learned Judicial Magistrate-1st Class, Jamshedpur, is quashed and set aside against the petitioners.

16. In the result, this Cr.M.P., stands allowed.

17. In view of disposal of the instant Cr.M.P., the interim relief granted, if any, is vacated.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 29th of October, 2025
AFR/ Abhiraj

Uploaded on 03/11/2025