

(2008) 01 P&H CK 0268

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 49228-M of 2005

Ashok Kumar Jain

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Jan. 14, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 134, 144, 172, 173, 174
- Penal Code, 1860 (IPC) - Section 172, 173, 174, 175, 176

Citation: (2008) 1 RCR(Criminal) 920

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Askhay Jain, for the Appellant; K.S. Pannu, A.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

This order shall dispose of Cr. Misc. Nos. 49228-M, 49232-M and 49234-M all of 2005 and all titled Ashok Kumar Jain v. State of Punjab and others, as common questions of law and facts are involved in these petitions.

2. For facility the facts are taken from Crl. Misc. 49228-M of 2005 titled Ashok Kumar Jain v. State of Punjab and others

The petitioner has filed this Criminal Misc. u/s 482 of the Cr.P.C. (for short the Code) for quashing of the order bearing Endst. No. 4092-4127/MA-MC-3 dated 27.5.2005 passed by respondent No. 2 u/s 144 of the Code attached as Annexure P-3 with the petition and for quashing of FIR No. 116 dated 27.6.2005 u/s 188 of the I.P.C. registered at Police Station Bhikhi attached as Annexure P-4 with the petition. The petitioner also prays for quashing of subsequent proceedings arising out of the said FIR.

3. The petitioner is a qualified Chemist and has been granted licence by the Punjab State Pharmacy Council, Chandigarh for running a chemist shop. The licence for running the chemist shop was issued under the Drugs and Cosmetic Rules, 1945 (for short the Rules) which also regulate the sale of medicines to the customers. Business of chemist has to be done as per the Rules framed under the Act.

4. The petitioner claims that he is entitled to sell, exhibit or distribute all medicines except those medicines specified in Schedule X of the Rules. Respondent No. 2 i.e. Deputy Commissioner-cum-District Magistrate, Mansa exercising powers u/s 144 of the Code has been pleased to issue a notification Annexure P-3, which reads as under:-

"Office of the District Magistrate, Mansa

(MA Branch)

Order u/s 144 Cr.P.C., 1973 Dated.....

ORDER

Whereas it has been brought to my notice by various social and non-government organisations that a large number of persons, especially youth and those belonging to economically weaker sections are falling prey to the menace of narcotics and drugs. It has also been highlighted in the medical that a large number of prescription drugs which are currently being illegally sold by chemists over the counter without valid prescription, are being misused for their narcotic effects. The abuse of such drugs and chemicals beyond the prescribed dosage and without prescription of a registered medical practitioner is leading to deterioration in law and order with the increasing incidents of petty crimes and disturbance of peace and tranquility, along with disruption in family life.

2. And whereas it has come to my notice that a person is easily initiated in to misuse of drugs due to easy availability of various types of sedatives, painkillers, anti-allergic, anti-histamines, injections, cough syrups, etc. in regard to which certain medicines are consistently prone to issued (be used ?) as intoxicants.

3. Whereas in the public interest, I, Raj Kamal Chaudhary, IAS, District Magistrate, Mansa being satisfied that sale of medicines without prescription and non-maintenance of the stock registers sale and purchase registers leads to easy availability of intoxicating drugs, which is harmful on the health, mind and life of youth in particular and public in general, and therefore, immediate measures are required in the public interest.

4. Therefore, in exercise of the powers vested in me u/s 144 of the Cr.P.C., 1973, I order that no chemist in this district, whether retailer or whose-seller, will sell, whether by retail wholesale, any drug/medicine which are detailed in Annexure-I (overleaf) without a prescription from registered medical practitioner. It is further

directed in the public interest that all the chemists/medical/drugs store (whether retail or wholesale) will maintain complete record of their current stock, sales and purchase register, which will be available for inspection to all Executive Magistrate, Police Officials of the rank of DSP and above, or any other person specifically authorised by the undersigned in writing.

5. In view of the urgency of the matter, this order is being passed ex parte and is addressed to the public in general.

6. This order shall remain in force for a period of two months from the date of issue i.e. 27.5.2005 to 26.7.2005.

7. This order shall be affixed to the Notice Board of the District Magistrate, SSP, Civil Surgeon, all SDMs, Tehsildars in the district and shall be promulgated by announcement through publicity van of the Public Relations Department, Mansa and affixed at conspicuous places.

8. Given under my hand and seal today the 27th day of May, 2005."

5. In view of the above mentioned order attached as Annexure P-3 with the petition, the police has registered FIR against the petitioner u/s 188 I.P.C. for violating the notification Annexure P-3 as he was found to be selling drugs contained in Schedule (h) of the Rules.

6. The quashing of the FIR as well as subsequent proceedings has been sought on the ground that the order passed by the learned District Magistrate u/s 144 of the Code (Annexure P-3) itself is without jurisdiction. The contention of the learned counsel for the petitioner was that the learned District Magistrate did not have any authority to issue notification in exercise of powers u/s 144 of the Code with regard to the sale and distribution of medicines. The contention of the learned counsel for the petitioner was that sale and distribution of medicines is governed by special Act and Rules.

7. There is force in this contention. The Legislature has already enacted an Act and Rules have been framed thereunder to regulate the sale and distribution of medicines. Thus, the issuance of notification under the general law would, therefore, be bad as it would amount to encroaching upon the occupied field.

8. Other ground of challenge of FIR registered by the Police is that the registration of FIR u/s 188 I.P.C. is barred by the provisions of Section 195(1) of the Code.

9. Sections 144 and 195(1) of the Code are reproduced below for ready reference:-

"144. Power to issue order in urgent cases of nuisance or apprehended danger. - (1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a

written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. - (1) No Court shall take cognizance:-

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the I.P.C. (45 of 1860) or

- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the I.P.C. (45 of 1860), namely, Sections 193 to 196 (both inclusive). 199, 200, 205 to 211 (both inclusive) and 208, when such offence is alleged to have been committed in, or in relation to any proceedings in any Court, or

(ii) of any offence described in Section 463 or punishable u/s 471, Section 475 or Section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offense specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

10. The reading of Section 195(1) of the Code shows that proceedings under Sections 172 to 188 of Code can only be started on a complaint by the concerned public servant and it is not open to the police to register a case even if the same is filed on the complaint of concerned official.

11. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of this court in the case of wherein this Court has been pleased to lay down as under:-

"2. These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedere Code or penal laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of section is that, "No court shall take cognizance - except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate". The intention appears to be clear that where an offence is committed u/s 188 I.P.C., the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

3. The counsel for the petitioner has relied upon and In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case

though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."

12. Learned counsel for the State, however, submits that as the proceedings have been initiated on the basis of the complaint filed by the District Magistrate copy whereof has been placed on the record of the Judicial Magistrate and notice of the complaint has been taken by the learned Judicial Magistrate, the contention raised by the learned counsel for the petitioner cannot be accepted.

On consideration of the matter, I find force in the contention raised by the learned for the petitioner.

13. It is the settled law that provisions of special Act would over-rule the general Act procedure and once particular procedure is prescribed to deal with the sale of medicines under the Act, and the Rules framed thereunder it was not open to respondent No. 2 to have issued notification Annexure P-3 in exercise of powers u/s 144 of the Code.

14. The notification Annexure P-3 cannot be sustained as the learned District Magistrate did not have jurisdiction to issue a notification u/s 144 of the Code with respect to the sale and distribution of medicines as the same are governed by the Special Act referred to above.

15. Otherwise also, the impugned FIR and subsequent proceedings cannot be sustained in view of the bar contained in Section 195 of the Code as interpreted by this court in the case of Jagtar Singh v. Union Territory (supra).

16. Consequently, all these four petitions are allowed. The FIRs and subsequent proceedings are ordered to be quashed.