

Varun Samra Vs State of H.P.

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 16, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 482
Drugs and Cosmetics Act, 1940 - Section 27(b)(ii), Section 32

Citation: (2016) sup HimLR 2651

Hon'ble Judges: Mr. P.S. Rana, J.

Bench: Single Bench

Advocate: M/s Sandeep Wadhawan and Dheeraj K. Vashishat Advocates, for the Petitioners; Mr. M.L. Chauhan Addl. Advocate General with Mr. R.K. Sharma, Deputy Advocate General, for the Non-Petitioner

Final Decision: Disposed Off

Judgement

P.S. Rana, J. - Order Present petition is filed under Section 482 of Code of Criminal Procedure 1973 for quashing criminal complaint No. 240-1

of 2010 title State of H.P. through Drug Inspector District Kangra v. Varun Samra and others filed under Drugs and Cosmetics Act 1940 for

punishment of accused persons under Section 27 (b) (ii) of Drugs and Cosmetics Act 1940.

Brief facts of the case

2. It is alleged that on 15.10.2010 State of H.P. through Drug Inspector District Kangra filed complaint under Drugs and Cosmetics Act 1940

against accused persons alleging that on 13.5.2010 Inspector from the office of S.P. CBI Shimla came to office of Drug Inspector and disclosed

that M/s Jackson Laboratories Plot 56-61 Industrial Area Phase III Sansarpur Terrace District Kangra is engaged in manufacture of Tablet

Comiflam allegedly appearing to be similar and under imitation of Tablet Comiflam being manufactured by M/s Aventis Pharma.

There is recital in complaint that thereafter premises of M/s Jackson Laboratories inspected on 13.5.2010 in afternoon. There is recital in

complaint that licence to manufacture Tablet Comiflam was granted to M/s Jackson Laboratories Pvt. Limited in the month of November 2009.

There is recital in complaint that M/s Jackson Laboratories Private Limited manufactured Tablet Comiflam in the month of October 2009 and

circulated in the market for sale to general public. There is recital in complaint that Tablets Comiflam Batch Nos. T-0977 and T-0982 were

manufactured relating to drug Tablet Comiflam in the month of October 2009 prior to the issuance of licence. There is recital in complaint that

1118900 Tablet Comiflam purchased by M/s Antex Pharma Private Limited vide invoice No. 00235 dated 27.10.2009 and thereafter sold to M/s

Tirupati Pharma and thereafter sold to various dealers at Delhi and outside Delhi. There is recital in complaint that prosecution sanction obtained

from Assistant Drug Controller H.P. on 29.9.2010. Complaint before learned Chief Judicial Magistrate Kangra filed on 25.10.2010 and learned

Chief Judicial Magistrate Kangra issued summons to accused persons under Section 27 (b) (ii) of Drugs and Cosmetics Act 1940 on 27.10.2010.

Thereafter learned Chief Judicial Magistrate listed the case for pre-charge evidence for 18.3.2014. Thereafter learned Chief Judicial Magistrate

recorded pre-charge evidence of Shri Avinash Saini working as Inspector in CBI Branch Shimla H.P. on 18.03.2014 and listed the case for

remaining pre-charge evidence of complainant for 24.5.2014.

Petitioners filed Cr.MMO No. 4125 of 2013 before Hon'ble H.P. High Court. Hon'ble H.P. High Court called entire record of learned Trial

Court on dated 19.3.2014 through special messenger.

3. Court heard learned Advocate appearing on behalf of petitioners and learned Additional Advocate General appearing on behalf of State and

also perused the record carefully.

4. Following points arise for determination in present petition:-

Point No.1

Whether petition filed under Section 482 of Code of Criminal Procedure 1973 is liable to be accepted as mentioned in memorandum of grounds of

petition? Point No.2

Final order.

Findings upon Point No. 1 with reasons

5. Submission of learned Advocate appearing on behalf of petitioners that after amendment of Section 32 w.e.f. 10.8.2009 cognizance of offence

under Chapter IV of Drugs and Cosmetics Act 1940 could be taken only by Court of Sessions and Chief Judicial Magistrate is not legally

competent to take cognizance of offence and on this ground petition be allowed is partly answered in yes and partly answered in no. As per

Section 32(2) of Drugs and Cosmetics Act 1940 no Court inferior to that of a Court of Sessions would try the offence under Chapter IV of Drugs

and Cosmetics Act 1940 w.e.f. 10.8.2009. The complaint was filed before learned Chief Judicial Magistrate on 25.10.2010 after amendment of

Section 32 of Drugs and Cosmetics Act 1940. It is held that learned Chief Judicial Magistrate committed irregularity by way of recording pre-

charge evidence in present case. It is held that learned Chief Judicial Magistrate was under legal obligation to send the complaint to learned

Sessions Judge for trial as mentioned under Section 32 of Drugs and Cosmetics Act 1940. It is well settled law that filing of complaint itself does

not amount to taking cognizance of case. It is well settled law that Court takes cognizance of case when it applies its mind to frame charge against

the accused. It is well settled law that cognizance is sine-qua-non for trial and it cannot be equated with issuance of process. It is well settled law

that initiation of criminal proceedings is different from commencement of criminal trial under Section 32(2) of Drugs and Cosmetics Act 1940. No

Court inferior to that of Court of Sessions would try an offence punishable under Chapter IV of Drugs and Cosmetics Act 1940. It is well settled

law that trial of criminal case starts after framing of charge. In the present case charge has not been framed against accused persons. See AIR

1961 SC 986 title Gopal Das Sindhi and others v. State of Assam and another. See AIR 2000 SC 2946 title Narsingh Das Tapadia v.

Goverdhan Das Partani and another. See AIR 2008 SC 1213 title S.K. Sinha Chief Enforcement Officer v. M/s Videocon

International Ltd. and others.

6. Submission of learned Advocate appearing on behalf of petitioners that as per Section 34 of Drugs and Cosmetics Act accused persons are not

liable and on this ground petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Facts whether accused

persons were in-charge of and were responsible to the company for conduct of business of company is complicated issue of facts. Judicial findings

relating to complicated issue of facts cannot be given at this stage of case. Same complicated would be decided by learned Trial Court after giving

due opportunity to both parties to lead evidence in support of their case. It is not expedient in the ends of justice to give judicial findings at this

stage of case upon complicated issue of facts unless opportunity is granted to both the parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioners that M/s Jackson Laboratories Pvt. Ltd. was permitted to manufacture

Tablet Comiflam in October 2009 and in view of circular of Ministry of Health Government of India dated 1.10.2012 there was no necessity to

obtain prior permission and on this ground petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned.

Circular of Ministry of Health Government of India came into operation on 1.10.2012 and present complaint was filed against accused persons on

25.10.2010. Hence it is held that circular of Ministry of Health Government of India dated 1.10.2012 is prospective in nature and not

retrospective in nature. It is held that effect of circular dated 1.10.2012 will be decided by learned Trial Court when case shall be disposed of

finally by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case.

8. Submission of learned Advocate appearing on behalf of petitioners that prima facie case for summoning the petitioners under Section 27 (b) (ii)

of Drugs and Cosmetics Act 1940 is not made out and on this ground petition be allowed is rejected being devoid of any force for the reasons

hereinafter mentioned. The facts whether petitioners have committed offence or not cannot be decided at this stage. Judicial findings to the effect

whether petitioners have committed offence under Drugs and Cosmetics Act 1940 would be given by learned Trial Court after recording statement

of oral witnesses namely (1) Ashish Raina Drug Inspector, (2) Rajinder Thapa, (3) M.S. Hazare Dy.S.P.(B), (4) Kapil Dhiman Drugs Licensing

Authority and after proof of annexures in accordance with law i.e. (1) Annexure A copy of notification (2) Annexure B Direction under Section 22

(i) (cca) for production of record (3) Annexure C1 to C2 Form No. 17 and 17-A for taking samples (4) Annexure D Intimation to Drug Licensing

Authority regarding raid in M/s Jackson Laboratories Sansarpur Terrace (5) Annexure E Postal receipt No. SPEE725770803IN dated

15.5.2010 (6) Annexure F Postal receipt No. SPEE725770817IN dated 15.5.2010 (7) Annexure G1 to G2 Two memoranda to Government

Analyst on Form 18 for the two samples marked DS/2010-28 and DS/2010-29 (8) Annexure H Reply of M/s Jackson Laboratories Sansarpur

Terrace dated 14.5.2010. (9) Annexure I-1 to I-95 second reply of M/s Jackson Laboratories Sansarpur Terrace dated 19.5.2010. (10)

Annexure J-1 to J-2 Analysis report of Tab Comiflam for the two samples. (11) Annexure K-1 to K-2 Show cause notice to M/s Jackson

Laboratories Sansarpur Terrace. (12) Annexure Rs. Withdrawal of permission to manufacture Tab Comiflam by M/s Jackson Laboratories

Sansarpur Terrace. (13) Annexure M-1 to M-2 Prosecution sanction dated 28.9.2010. (14) Annexure N-1 to N-2 Letter No. 9779 RC SIB

2010 E0004 EOU-V, ND dated 23/27.9.2010 issued by S.P., CBI, EOU-V, New Delhi for instruction to lodge complaint against accused. (15)

Annexure N- 3 to N-188 Investigation report and supporting documents of M S Hazare Dy.S.P. CBI, EOU-V New Delhi annexed with

complaint. It is prima facie proved on record that Drug Controller Administration H.P. issued show cause notice to M/s Jackson Laboratories Pvt.

Ltd. to the effect that M/s Jackson Laboratories Pvt. Ltd. had manufactured and sold drug Tablet Comiflam without obtaining prior permission as

required under Drugs and Cosmetics Act 1940. It is also prima facie proved on record that Drug Controller Administration H.P. vide office order

dated 28.5.2010 held that M/s Jackson Laboratories Pvt. Ltd. had manufactured and sold Tablet Comiflam without prior permission from

competent authority. It is also prima facie proved on record that Drug Controller Administration H.P. had cancelled the licence of M/s Jackson

Laboratories Pvt. Ltd. to manufacture Tablet Comiflam on dated 28.5.2010. It is also prima facie proved on record that Assistant Drug Controller

Licensing Authority-cum-Controlling Authority Baddi had given prosecution sanction to prosecute co-accused persons namely (1) Jugal Kishore

Samra, (2) Ramesh Kumar Samra, (3) Sudhir Kumar Samra.

9. Submission of learned Advocate appearing on behalf of petitioners that there is no sanction to prosecute Varun Samra and on this ground

petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that prosecution starts when

charge is framed against accused persons. It is held that sanction to prosecute Varun Samra is required when charge would be framed and when

trial would commence in accordance with law. Court is of the opinion that Varun Samra can raise the plea at the time of framing of charge and at

the time of commencement of trial before learned Trial Court relating to non-prosecution sanction.

10. It is well settled law that evaluation of truth or falsity would be possible only after evidence is recorded by learned Trial Court. Issue of

absence of mensrea or actus reus cannot be decided at this stage of case when charge is not framed against accused persons as of today. See

AIR 1976 SC 1947 title Smt. Nagawwa v. Veeranna Shivalingappa. See AIR 1963 SC 1430 title Chandra Deo Singh v. Prokash

Chandra Bose alias Chabi Bose and another. See AIR 2016 SCW 122 title Madan Razak v. State of Bihar. See AIR 2014 SC 3352

title Mosiruddin Munshi v. Md. Siraj and another. See (2004)1 SCC 691 title State of M.P. v. Awadh Kishore Gupta. See (1992) Supp

1 SCC 335 title State of Haryana v. Bhajan Lal.

11. Case law cited by learned Advocate appearing on behalf of petitioners i.e. 2005(8) SCC 89 title S.M.S. Pharmaceuticals Ltd. v. Neeta

Bhalla, 2011(6) RCR (Cri.) 2194 title David Methew v. State of H.P. (2010)3 SCC 330 title National Small Industries Corporation

Ltd. v. Harmeet Singh Paittal and another, AIR 1992 SC 604 title State of Haryana v. Bhajan Lal are not applicable at pre-charge stage of

case being distinguished facts. In view of above stated facts point No.1 is answered partly in affirmative and partly in negative. Point No.2(Final

Order)

12. In view of findings upon point No.1 petition filed under Section 482 Cr.P.C. is partly allowed and complaint No. 240-1 of 2010 title State of

H.P. through Drug Inspector District Kangra v. Varun Samra and others is withdrawn from the Court of learned Chief Judicial Magistrate Kangra

(H.P.) forthwith and is assigned to learned Sessions Judge Kangra at Dharamshala for disposal in accordance with law. Parties are directed to

appear before learned Sessions Judge Kangra (H.P.) at Dharamshala on 30.9.2016. Observations will not effect merits of case in any manner and

will be strictly confine to disposal of present petition. File of learned Chief Judicial Magistrate be sent to learned Sessions Judge Kangra (H.P.) at

Dharamshala forthwith. Learned Registrar (Judicial) will send certify copy of order to learned Sessions Judge Kangra (H.P.) and learned Chief

Judicial Magistrate Kangra (H.P.) forthwith for compliance. Cr.MMO No. 4125 of 2013 is disposed of. Pending miscellaneous application(s) if

any also stands disposed of.