



MAJESTY LEGAL
Advocates & Solicitors

ONLY DRUG INSPECTOR CAN PROBE, INSTITUTE COMPLAINT
U/S 32(1) OF D & C ACT, 1940

RAKESH KUMAR VERSUS THE STATE OF BIHAR & ANR.

In the case of *Rakesh Kumar versus The State Of Bihar & Anr.*¹, Hon'ble Supreme Court examined whether a police officer could be considered as the Inspector referred to in Section 32(1)(a) of the Drugs and Cosmetics Act, 1940, to validate the prosecution for alleged offences under the said Act. Upon review of various legal precedents, Hon'ble Court noted that only 'Drug Inspector' has powers to investigate any complaint, institute prosecution and police officer has absolutely no role to play in such offences. Therefore, it held that Section 32 of the Act clearly states that police officers cannot prosecute offenders regarding such offenses. Only persons specified in Section 32 are entitled to do so.

Accordingly, the Hon'ble Supreme Court deemed the cognizable order to be legally invalid and thus set aside the proceedings initiated against the appellant.

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¹ARISING OUT OF SLP (CRIMINAL) NO. 10373 OF 2018

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
(ARISING OUT OF SLP (CRIMINAL) NO. 10373 OF 2018)

RAKESH KUMAR

Appellant(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

O R D E R

1. Leave granted.

2. Heard Mr. Mithilesh Kumar Singh, learned counsel appearing for the appellant. The State of Bihar is represented by Mr. Samir Ali Khan, learned counsel.

3. The challenge here is to the order dated 27.09.2018 whereunder, the learned Judge of the High Court dismissed the petition filed under Section 482 of Cr.P.C. The appellant challenged order dated 22.11.2016 passed by the learned Judicial Magistrate First Class, Jamui taking cognizance of the offence in the Lakshmipur P.S. Case No. 11 of 2016 under various sections of the Drugs and Cosmetics Act, 1940. Prayer was also made for quashing the said proceedings. The High Court however noticed that a *prima facie* case against the appellant is made out and accordingly the interference was found to be unmerited with the cognizance order, against the appellant.

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NITIN TALREJA
Date: 2024.03.21
17:15:52 IST
Reason: []

Notice in this case was issued on 10.12.2018 on the contention raised that a Police officer is not empowered to register any FIR

and proceed in a case under the Drugs and Cosmetics Act, 1940 since such proceedings can be competently initiated only on the basis of complaint by a Drug Inspector.

5. The question here is whether the Police officer who submitted the police report can be considered to be the Inspector mentioned in Section 32(1)(a) of the Drugs and Cosmetics Act, 1940, to validate the prosecution for the offences alleged under this Act.

6. It would be relevant to note herein that the chargesheet was also filed under Section 7 of the Essential Commodities Act, 1955 but the learned JMFC, Jamui in his order dated 22.11.2016 (Annexure P/5) said that since offences under Section 7 of the Essential Commodities Act, 1955 are triable by a Special Court, the same is beyond the jurisdiction of the Court of the JMFC.

7. Today, when the case is taken up, the learned counsel for the appellant refers to the ratio in *Union of India v. Ashok Kumar Sharma & Ors.* reported in (2021) 12 SCC 674 where in the concluding paragraph, the following was recorded:

"170.1. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of CrPC, the police officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

xx

xx

xx

170.3. Having regard to the scheme of CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a police officer cannot register an FIR under Section

154CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of CrPC.”

8. Mr. Samir Ali Khan, learned counsel for the State in his turn submits that since the prosecution was launched with the Complaint filed by the police officer but not by the Drug Inspector, the ratio in *Ashok Kumar Sharma* (supra) would apply to the facts of this case.

9. Having noted the above, it is apparent that the proceedings under the Drugs and Cosmetics Act, 1940 initiated against the appellant on the basis of the complaint of the Police Inspector is legally invalid. Accordingly, the cognizance order dated 22.11.2016 is found to be unjustified and is set aside. In consequence, we quash the proceedings initiated against the appellant in connection with the Lakshmipur P.S. Case No. 11 of 2016. The appeal is accordingly allowed.

10. Pending application(s), if any, shall stand disposed of.

.....J.
(HRISHIKESH ROY)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
MARCH 19, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10373/2018

(Arising out of impugned judgment and order dated 27-09-2018 in CRM No. 44278/2017 passed by the High Court of Judicature at Patna)

RAKESH KUMAR

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

(IA No. 171672/2018 - EXEMPTION FROM FILING O.T.)

Date : 19-03-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Mithilesh Kumar Singh, AOR
Mrs. Manju Singh, Adv.
Mr. Ashutosh Kumar Singh, Adv.
Mr. Tarun Verma, Adv.
Mr. Aditya Durgvanshi, Adv.
Mr. Saumitra Singh, Adv.

For Respondent(s) Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.
Mr. Kashif Irshad Khan, Adv.
Mr. Abhimanyu Jhamba, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The operative part of the order reads as under:

"9. Having noted the above, it is apparent that the proceedings under the Drugs and Cosmetics Act, 1940 initiated against the appellant on the basis of the complaint of the Police Inspector is legally invalid. Accordingly, the cognizance order dated 22.11.2016 is found to be unjustified and is set aside. In consequence, we quash the proceedings

initiated against the appellant in connection with the Lakshmipur P.S. Case No. 11 of 2016. The appeal is accordingly allowed."

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)