



2025:DHC:5117



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.07.2025*+ **CRL.M.C. 175/2025 & CRL.M.A. 919/2025****PRATEEK TEKWANI**

.....Petitioner

Through: Mr. Abhinav Sekhri, Ms.
Surabhi Vaya, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the
State with Mr. Vikrant Singh
Padiyar, Mr. Chanderpal, Ms.
Shimpi Chaudhary and Mr.
Manoj Kumar, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner, by way of this petition, seeks quashing of chargesheet dated 06.04.2024 filed in case arising out of FIR No. 88/2023, registered on 12.04.2023 at Police Station Crime Branch (WR-2), Delhi for the commission of offence under Sections 4/6/7/8 of the The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 [hereafter '*E-Cigarettes Act*'].

2. The petitioner also seeks setting aside of the order dated



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09.04.2024 [hereafter '*impugned order*'], passed by the learned Chief Judicial Magistrate, Patiala House Court, New Delhi [hereafter '*Magistrate*'] in Cr. Case No. 2866/2024 *vide* which the learned Magistrate took cognizance of the alleged offences on the basis of chargesheet filed by the police.

3. The circumstances giving rise to the present proceedings are that on 11.04.2023, a secret information was received *vide* GD No. 4A, at the Crime Branch, New Delhi, that a large quantity of illegal e-cigarettes and related materials, valued in crores of rupees, were unlawfully stored in a warehouse at Ghitorni, Delhi, which is owned by the petitioner herein. Subsequently, a raiding team had reached Khasra No. 415, 4th Floor, Ghitorni, New Delhi, i.e. the said location, where the petitioner was found present along with six of his employees and a substantial quantity of e-cigarettes and accessories were recovered and seized by the raiding team lead by SI Satyender Yadav. The case of the prosecution is that the petitioner is engaged in his family business, which runs shops by the name of 'Prince Paan', and has various outlets across different areas of Delhi. It is alleged that he is involved in the illegal trade of e-cigarettes and related products, and he does not possess any valid license for the same. Thereafter, a written complaint was filed by SI Satyender Yadav which culminated in the registration of the FIR No. 88/2023, dated 12.04.2023, registered at Police Station Crime Branch, Delhi for offence under Sections 4/6/7/8 of E-Cigarettes Act.

4. During investigation, the seized samples were sent to FSL,



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Rohini. The statements of six employees and other witnesses were recorded under Section 161 of Cr.P.C.

5. As per status report, after completion of preliminary investigation, and due to statutory limitation of one year, chargesheet dated 06.04.2024 was filed by the investigating agency, and cognizance of the alleged offences was taken by the learned Magistrate *vide* impugned order dated 09.04.2024. The said order is set out below:

“ Heard. Record perused. Considering the overall facts and circumstances of the case, I take cognizance of offences punishable u/s 4/6/7/8 The Prohibition of Electronic Cigarettes Act 2019.

There is sufficient material on record to summons accused Prateek Tekwani. Let summons be issued to accused and notice to his surety returnable on NDOH.

List on 06.11.2024.”

6. As per Status Report placed on record, it is stated that further investigation regarding a Paytm account linked to the petitioner’s mobile number 9999917702 is pending, and a supplementary chargesheet in respect of the same alongwith a complaint shall be filed in due course of time.

7. In this background, the learned counsel for the petitioner argues that the proceedings arising out of the present FIR are vitiated for non-compliance with the mandatory requirement under Section 12 of the E-Cigarettes Act, which bars the Court from taking cognizance of offences under the Act, except on the basis of a written complaint



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by an authorised officer. It is contended that in the present case, no complaint – as mandated under Section 12 – was filed by an authorised officer, but the learned Magistrate illegally took cognizance of offences based on the chargesheet. It is stated that since no cognizance of the alleged offences could be taken on a chargesheet, this chargesheet was also *non est* in the eyes of law. It is argued that this chargesheet was filed only to illegally circumvent the prohibition of limitation under the law. The learned counsel for the petitioner further submits that neither the FIR nor the chargesheet shows that any offence under the said Act has been committed by the petitioner. The statements recorded during the investigation do not show any clear connection between the petitioner and the alleged illegal activities or the premises involved. It is also not clearly established whether the items allegedly recovered are actually prohibited under the Act. Therefore, it is contended that the continuation of present proceedings would amount to a misuse of the legal process and thus, the same be quashed and set aside.

8. The learned APP for the State, on the other hand, argues that the petitioner herein was found in possession of e-cigarettes without any valid license, when his premises were raided pursuant to receipt of secret information. It is submitted that the samples of the recovered items were sent to the FSL, and the report of the same is awaited; moreover, priority letters have been sent to the Director, FSL Rohini, to expedite the same. At present, statements of six employees have been recorded under Section 161 of Cr.P.C. and the



investigation is ongoing, which includes the analysis of a Paytm account linked to the petitioner's mobile number. It is also submitted that a supplementary chargesheet, along with a written complaint as per Section 12 of E-Cigarettes Act, will be filed upon completion of the investigation. It is, therefore, prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

10. The issue for consideration in the present petition is whether cognizance taken by the learned Magistrate of the alleged offences under the E-Cigarettes Act, on the basis of chargesheet filed by the police, in absence of any complaint filed by the authorised officer under Section 12 of the E-Cigarettes Act, is valid in law. Another issue is whether prayer for quashing the impugned chargesheet is merited in the given facts and circumstances.

11. In the present case, the allegations against the petitioner, in a nutshell, are that he was involved in the unlawful trade and supply of e-cigarettes and other related products – acts which are punishable under the provisions of E-Cigarettes Act.

12. The primary contention of the learned counsel for the petitioner is that the procedure prescribed under Section 12 of the E-Cigarettes Act has not been followed by the prosecution as well as the learned Magistrate. In this regard, it shall be apposite to first take note of the said provision, which is set out below:



“12. Cognizance of offences.—No court shall take cognizance of an offence punishable under this Act, except upon a complaint in writing made by an authorised officer under this Act.”

13. Section 12 clearly provides for taking cognizance of offences under the E-Cigarettes Act by the Courts, only upon a complaint being made by an ‘authorised officer’ under this Act.

14. An ‘authorised officer’ has been defined under Section 3(b) of the E-Cigarettes Act, which reads as under:

“3(b). “authorised officer” means—(i) any police officer not below the rank of sub-inspector; or (ii) any other officer, not below the rank of sub-inspector, authorised by the Central Government or the State Government by notification;”

15. Thus, it is clear from a bare reading of Section 12 of E-Cigarettes Act that there exists a bar on Courts – as far as taking cognizance of an offence under the Act is concerned, and the same can only be taken in accordance with Section 12, i.e. upon filing of a complaint made by an authorised officer who is an officer mentioned under Section 3(b) of the E-Cigarettes Act.

16. At the same time, it is also relevant to take note of some other provisions of the Act, including the punishment for the offences under the Act:

“7. Punishment for contravention of section 4.—

Whoever contravenes the provisions of section 4, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to



three years and with fine which may extend to five lakh rupees.

8. Punishment for contravention of section 5.—

Whoever contravenes the provisions of section 5, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.”

17. It shall also be pertinent to note that the offences under the E-Cigarettes Act are ‘cognizable’. In this regard, Section 13 of the Act provides as under:

“13. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under section 4 shall be cognizable.”

18. Cognizable offences are those criminal offences where the police has the power to make an arrest, without a warrant, and start an investigation without requiring any permission from a Court of law. The Code of Criminal Procedure, 1973 [hereafter ‘*Cr.P.C.*’] defines cognizable offence as under:

“2(c) “cognizable offence” means an offence for which, and **“cognizable case”** means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant...”

19. Thus, the police has the power to make an arrest for offence under the Act, for which an FIR will have to be registered. Since an FIR would be registered, the police would also have to file an appropriate report after completion of investigation.

20. In light of the aforesaid, insofar as the issue pertains to whether



an FIR can be registered and a chargesheet can be filed pursuant to conclusion of investigation, despite the bar on taking cognizance under Section 12 of the E-Cigarettes Act, it is relevant to note that a similar issue was examined and decided by this Bench in *Manoj Krishan Ahuja v. State of NCT of Delhi & Anr.*: 2023 SCC OnLine Del 2303. Though the case was registered under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 [hereafter '*PC&PNDT Act*'], it was held therein that while the cognizance taken by the Magistrate on the basis of a chargesheet filed by the police was bad in law in view of the specific bar under the statute, the registration of FIR and conducting investigation culminating in the filing of a chargesheet was not *per se* illegal, since the offences were cognizable in nature. The relevant observations of the said decision are reproduced below:

“32. Having discussed the procedure contemplated under Section 28 of the Act in the preceding discussion, this Court notes that the manner in which the cognizance was taken by the learned Trial Court upon a chargesheet is not the procedure envisaged under the PC&PNDT Act. In the present case, the complaint had to be filed by the concerned Appropriate Authority before the learned Trial Court as a complaint under Section 200 Cr. P.C. **Since the cognizance has been taken on the chargesheet filed under Section 173 of Cr. P.C., it is clearly in the teeth of the bar under Section 28 of this Act which bars cognizance except upon receipt of complaint in the manner provided therein.** It is also the *sine qua non* for taking cognizance that the said Appropriate Authority or the person so authorised should be validly appointed.

39. However, this Court holds that technically, though the police had been authorised to prosecute the offenders, the same did not absolve the Appropriate Authority of their duty to file a



complaint which was mandatory under the PC&PNDT Act under Section 28. The Appropriate Authority, however, had filed a complaint in the Court on 02.09.2020. **Therefore, the cognizance in absence of complaint of the Appropriate Authority was barred in law.**

50. Thus, tested from the facts and material on record of the present case, the proceedings in this case were initiated by Appropriate Authority. The initial investigation as per the Act was carried out by them and they had sought assistance of the police for further investigation. Since the Act does not bar the involvement of the police entirely and the Appropriate Authority could have taken assistance of the police, the assistance of the police in this case was thereby taken. The reason as to why the Appropriate Authority felt a need for taking assistance of the police will become clear only during trial and, therefore, it cannot be a ground for quashing of FIR.

51. A report under Section 173 Cr. P.C., in the present case, was only a part of investigation or an 'assisted investigation' under the PC&PNDT Act as the initial investigation including search, seizures, etc. was carried out by the Appropriate Authority. **Since the offences under the PC&PNDT Act are cognizable in nature as per Section 27, as and when commission of a cognizable offence comes to the knowledge of police, the police is bound to register an FIR and conduct investigation. Thereafter, a report under Section 173 Cr. P.C. will also follow which can only be filed before a Court of law.**

52. However, as observed in preceding discussion, **the bar under Section 28 of the Act that cognizance can be taken only if a complaint of the Appropriate Authority is before the Trial Court is an absolute bar. Therefore, though registration of the FIR is not expressly barred under the Act on the complaint made by Appropriate Authority, taking of cognizance only on the basis of chargesheet filed by the police on the basis of such a complaint is barred.** A similar view was also taken by the Division Bench of Hon'ble High Court of Punjab and Haryana in case of *Hardeep Singh v. State of Haryana* CRM No. M-4211/2014.

107. As far as prayers of the petitioner are concerned, in view of aforesaid discussion, this Court holds that:



i. Cognizance taken by the learned Trial Court vide order dated 11.10.2019., in absence of any complaint filed by Appropriate Authority under Section 28 of the PC&PNDT Act, was bad in law, and thus, the order dated 11.10.2019. is set aside.

ii. However, no grounds for quashing of FIR are made out since registration of FIR upon a complaint lodged by Appropriate Authority or any person authorised on its behalf disclosing cognizable offence, conduct of investigation and filing of chargesheet is not barred under the PC&PNDT Act.”

(Emphasis added)

21. To the extent that there is a bar on taking cognizance of the offence otherwise than upon a complaint filed by an authorised person, but the offence itself is cognizable, the provisions of the E-Cigarettes Act and the PC&PNDT Act are similar to each other.

22. Accordingly, it can be held as under:

(i) The police can register an FIR, proceed with investigation in accordance with law, and upon completion of investigation, prepare and file a chargesheet for offences under the E-Cigarettes Act.

(ii) However, cognizance of such offences can be taken by the Magistrate only upon the filing of an appropriate complaint by the authorised officer, in view of specific bar under Section 12 of the E-Cigarettes Act.

23. Having considered the record and rival submissions, the factual sequence leading to the filing of the present petition is not in dispute. On 11.04.2023, based on secret information regarding illegal storage of e-cigarettes, a raid was conducted by the team of the Crime Branch at a warehouse in Ghitorni, New Delhi, allegedly under the control of



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the petitioner and linked to his family business ‘Prince Paan’. The petitioner was found present at the site along with six employees, and a substantial quantity of e-cigarettes and accessories was recovered. On the basis of a written complaint by SI Satyender Yadav, the FIR in question was registered on 12.04.2023 for offence under Sections 4/6/7/8 of the E-Cigarettes Act.

24. During investigation, statements of witnesses were recorded under Section 161 Cr.P.C., and the seized items were sent for forensic analysis. Thereafter, a chargesheet dated 06.04.2024 was filed before the learned Magistrate, who took cognizance of the alleged offences *vide* order dated 09.04.2024 in Cr. Case No. 2866/2024, solely on the basis of the chargesheet.

25. However, as noted in the above discussion, Section 12 of the E-Cigarettes Act creates a statutory bar on the Court from taking cognizance of any offence under the Act, except upon a complaint in writing made by an “authorised officer” as defined under Section 3(b) of the said Act. No such complaint by an authorised officer has been filed in the present case. Instead, cognizance was taken directly on the police chargesheet, without compliance with the mandatory procedural requirement under Section 12.

26. In light of the settled legal position, particularly in view of the judgment of this Court in *Manoj Krishan Ahuja v. State of NCT of Delhi* (*supra*), the cognizance so taken by the learned Magistrate is clearly impermissible in law and is therefore liable to be set aside.



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The impugned order dated 09.04.2024, whereby cognizance was taken on the basis of the chargesheet without the requisite complaint been filed by an authorised officer as per Section 12 of the E-Cigarettes Act, is accordingly **quashed and set aside**.

27. At the same time, there is no legal infirmity in the registration of FIR or conducting investigation by the police, since the offences under the E-Cigarettes Act are cognizable in nature. The police was thus empowered to investigate the matter and file a chargesheet upon completion of the investigation.

28. On merits as well, no case is made out for quashing the chargesheet. This Court notes that the chargesheet dated 06.04.2024 clearly details the sequence of events including the recovery of alleged illegal articles from the petitioner's premises during the raid, absence of any license *qua* the same in his possession, the statements of witnesses including six employees present at the site, and the continued investigation relating to digital transactions linked to the petitioner's mobile number. This material, taken at face value, *prima facie* disclose the commission of offences under the E-Cigarettes Act. The contentions raised by the petitioner regarding absence of direct evidence, reliability of the statements of the witnesses, and alleged coercion are matters of defence that cannot be adjudicated at this stage and would be subject to trial.

29. Accordingly, the prayer for quashing the impugned chargesheet is found unmerited and is rejected.



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30. Insofar as the submission of the learned APP for the State is concerned – that a supplementary chargesheet along with a written complaint in terms of Section 12 of the E-Cigarettes Act shall be filed upon completion of investigation – it is clarified that the prosecution shall be at liberty to take appropriate steps as per law, including filing of a complaint through an authorised officer in compliance with Section 12 of the E-Cigarettes Act. If and when such a complaint is filed, it shall be open to the learned Magistrate to consider the same in accordance with law.

31. As regards the issue of limitation, no opinion is being expressed by this Court at this stage. It shall be for the concerned Magistrate to examine the question of limitation, if raised, at the appropriate stage, keeping in view the provisions of the E-Cigarettes Act. All contentions in that regard are left open to be adjudicated on their own merits.

32. In view of the above, the present petition along with pending application stands disposed of.

33. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

34. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 01, 2025/vc