

GAHC010007112021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./19/2021

RAJESH CHANDRABHANJI KINGRANI AND 4 ORS
MANAGING DIRECTOR OF IKON REMEDIES PVT. LTD. AND PARTNER OF
M/S INNOVATIVE PHARMACEUTICALS, THE PRIMUS NEAR AXIS BANK,
AMRAVATI ROAD, WADI, NAGPUR 440023

2: MAHESH CHANDRABHANJI KINGRANI

DIRECTOR OF IKON REMEDIES PVT. LTD. AND PARTNER OF M/S
INNOVATIVE PHARMACEUTICALS THE PRIMUS NEAR AXIS BANK
AMRAVATI ROAD
WADI
NAGPUR 440023

3: ASHOK I. GUPTA
EMPLOYEE OF IKON REMEDIES PVT. LTD.
AND M/S INNOVATIVE PHARMACEUTICALS
THE PRIMUS NEAR AXIS BANK
AMRAVATI ROAD
WADI
NAGPUR 440023

4: HARI PRASAD
MARKETING EXECUTIVE OF IKON REMEDIES PVT. LTD. AND M/S
INNOVATIVE PHARMACEUTICALS
THE PRIMUS NEAR AXIS BANK
AMRAVATI ROAD
WADI
NAGPUR 440023

5: SUMEET K PURANIK
ASSTT. GENERAL MANAGER OF IKON REMEDIES PVT. LTD. AND M/S
INNOVATIVE PHARMACEUTICALS
THE PRIMUS NEAR AXIS BANK
AMRAVATI ROAD

WADI
NAGPUR 44002

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:OMPRAKASH BISHNOI

PROPRIETOR
M/S GURUJI PHARMACEUTICAL
1ST FLOOR
A.K. AZAD ROAD
SANTI RAM DAS PATH
REHABARI
GUWAHATI 781008
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. S SHARMA

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. M. Biswas, Advocate.

For the Respondents : Mr. P. Borthakur,
Addl. P.P., Assam.
Mr. J. Roy,
Senior Advocate.

Date of Hearing : 20.06.2023.

Date of Judgment : 27.07.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Biswas, the learned counsel appearing for the petitioners. Also heard Mr. J. Roy, the learned senior counsel representing the respondent no.2. Mr. P. Borthakur, learned Addl. Public Prosecutor

represents the State of Assam (respondent no.1).

2. This is an application under Section 482 of the CrPC praying for quashing the FIR of Paltan Bazar P.S. Case No.186/2020, under sections 406/420/506 and 384 of the Indian Penal Code.

3. Ikon Remedies Pvt. Ltd. is situated at Nagpur in the State of Maharashtra. It manufactures medicines. On March 12, 2018, Ikon Remedies Pvt. Ltd. appointed M/s. Guruji Pharmaceuticals situated at Guwahati as the Super Distributor. There are some conditions involved in the said distributorship. They can be summarised as under:

- I. The goods will be supplied on non-returnable basis only.
- II. M/s. Guruji Pharmaceuticals will market and sale the products on its own.
- III. If any order from the market is received, M/s. Guruji Pharmaceuticals will verify the credibility of the customer and if satisfied, then the products will be supplied and for that matter, Ikon Remedies Pvt. Ltd. shall not be liable for any responsibilities received from such customers.
- IV. On receipt of goods from transporter, M/s. Guruji Pharmaceuticals is to verify the stocks and if found any discrepancy, it shall be informed through Ikon Remedies Pvt. Ltd. If no such complaint is received within three days on receipt of goods, it will be treated as M/s. Guruji Pharmaceuticals has received goods absolutely in good condition as a per requirement.

V. Products having expiry period of more than six months cannot be treated as near expiry products.

VI. Ikon Remedies Pvt. Ltd. undertook not to send any products having less than six months period of expiry without prior approval.

4. M/s. Guruji Pharmaceuticals, issued different cheques to Ikon Remedies Pvt. Ltd. but many of those cheques were bounced because of insufficiency of funds. Therefore, dispute slowly started to crop up.

5. M/s. Guruji Pharmaceuticals complained that Ikon Remedies Pvt. Ltd. used to send products which were never ordered. They also sent products having short expiry dates.

6. In this way, allegations and counter-allegations were thrown at each other. In the meantime, Ikon Remedies Pvt. Ltd. filed cases under Section 138 of the N.I. Act against M/s. Guruji Pharmaceuticals at Nagpur. Similarly, M/s. Guruji Pharmaceuticals filed Money Suit in the court of Civil Judge No.1, Kamrup for recovery of payments of unsold stocks including expired products etc. Thereafter, M/s. Guruji Pharmaceuticals, lodged the FIR before police alleging criminal breach of trust and other offence.

7. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

8. The guiding principle for exercising the power under Section 482 of the CrPC has been laid down by the Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. Paragraph 102 of the judgment reads as under:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against

the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Coming back to the case in hand, I find that the dispute between the parties has its origin in the commercial transaction between them. Even the civil court also refused the prayer of injunction made by M/s. Guruji Pharmaceuticals in the civil suit. There is no doubt that the instant criminal proceeding has been maliciously instituted with an ulterior motive for wreaking vengeance on the accused.

10. I am of the considered opinion that this is a fit case for exercising power under Section 482 CrPC. Accordingly, the FIR of Paltan Bazar P.S. Case No.186/2020, under Sections 406/420/506 and 384 of the Indian Penal Code, is quashed.

The criminal petition is disposed of.

JUDGE

Comparing Assistant