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IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.15 OF 2022**

STATE, represented through
Assistant Drug Controller,
Directorate of Food & Drugs
Administration, 'Dhanwantari',
Opposite Shrine of Holy Cross,
Bambolim, Goa.

... Petitioner.

Versus

M/s Modern Laboratories,
FAC. OFF.: 45, 46, 47, Sector D-2,
Sanwer Road Industrial Area, Indore,
Madhya Pradesh, 452015.

... Respondent.

Mr. P. Faldessai, Additional Government Advocate for the
Petitioner.

Mr. Sahil Sardesai, Advocate for the Respondent.

CORAM:	VALMIKI MENEZES, J.
RESERVED ON:	14th July, 2025
PRONOUNCED ON:	4th December, 2025

JUDGMENT:

1. This Petition impugns the Judgement and order dated 06.05.2019, passed by the Judicial Magistrate First Class, South Goa, Margao in Criminal Case bearing No.AOA/83/2019/G, to the extent of the order passed, on the Reply dated 30.03.2019 filed by the

Respondent, at Exhibit -D5 and the Judgement and order dated 20.11.19 passed by the Principal Sessions Judge, South Goa at Margao in Criminal Revision Application No.46 of 2019, whilst dismissing the revision application and confirming the order dated 06.05.2019.

BRIEF FACTS

2. It is the case of the Petitioner, that vide letter dated 01.08.2018, the Petitioner received a complaint from the Office of the Administrator, Medical Officer, ESI Scheme, Panaji, with respect to Cephalexin Oral Suspension drug IP ('the drug' for short) being unfit for human consumption, pursuant to which the Petitioner on 03.08.2018 whilst adhering to Section 23 of the Drugs and Cosmetics Act, 1940 ('the Act' for short), drew samples of the drug at the ESI Dispensary, Verna, manufactured by the Respondent Company and sealed them into four packed portions separately; one portion was kept with the ESI Verna, the other was forwarded by the Petitioner to Government Analyst at Food and Drugs Laboratory, Bambolim.

3. Vide report dated 13.08.2018, the Government Analyst Laboratory at Bambolim declared the drug sample to be not of Standard Quality as per the Description, Assay and Stability. Thereafter, the Petitioner, in accordance with Section 25 of the Act, sent the report dated 13.08.2018, to the Office of the Administrator, Medical Officer, ESI Scheme, Panaji who then recalled the stock of the drug supplied to various hospitals and dispensaries, directing

them to stop the use of the drug and to furnish copies of purchase invoice as to from where it was purchased.

4. The Petitioner, on receiving a reply dated 28.11.2018, from the Office of the Administrator, Medical Officer, ESI Scheme, Panaji, which stated that balance stock available with the department was manufactured by the Respondent Company, sent a copy of the Government Analyst Report dated 13.08.2018 along with one sealed portion to the Respondent on 12.12.2018, informing that the drug does not meet the standards as per the Description, Assay and Stability, and was directed to submit their say within 28 days; as per their reply dated 07.01.2019, the Respondent Company disagreed with the contents of the report and failed to substantiate their disagreement with any evidence.

5. Therefore, the Petitioner in line with Section 25(4) of the Act, on 17.01.2019, filed criminal case no. AOA/83/2018 in the Court of the JMFC, Margao, seeking permission to forward a portion of the sample sealed by the Petitioner to the Director, Central Drug Laboratory, Kolkata, for testing the same before expiry and to provide a report.

6. The Respondents whilst opposing the said request, vide its reply dated 30.03.2019 contended that, as per the tests conducted by them and the NABL Accredited ITL Labs Pvt Ltd, the drug passes all parameters under the Act, Schedule 'M' of the WHO GMP norms

and the 'ASSAY' and further requested for sending the sealed sample in their custody for test, which was provided to them by the Petitioner, to the Central Drugs Laboratory Kolkata.

7. The JMFC, Margao, vide its judgement and order dated 06.05.2019(impugned herein) granted the Petitioner permission whilst also allowing the request of the Respondent as stated in their reply. The Respondent, on 09.05.2019, in compliance with the order dated 06.05.2019, submitted two samples of the drug in its custody and a DD of Rs.2400/-, which the Petitioner vide its letter dated 10.05.2019 requested the Respondent to collect the submitted sample back as it contradicts the provisions of the Act.

8. The Petitioner assailed the Judgement and order dated 06.05.2019, in the Principal Sessions Court, South Goa, Panaji in Criminal Revision No.46/2019, which allowed the request made by the Respondent for sending the sample of the drug in their custody for test; pending the said proceedings the Central Laboratory vide its report dated 27.05.2019, declared the drug to be substandard on test. The Sessions Judge vide its Judgement and order dated 20.11.2019 (also impugned herein) rejected the revision filed by the Petitioner.

SUBMISSIONS

9. The Advocate for the Petitioner, Mr. Pravin Faldessai, advanced the following submissions:

a. That the provisions of Section 23 and 25 of the Act have not been followed, either by the Trial Court or the Revisional Court whilst passing the Impugned orders; it was further submitted that the Revisional Court has failed to exercise jurisdiction vested in it under Section 397 of the CRPC to correct the order dated 06.05.2019, allowing the prayers of the Respondent/ Original Accused, directing the Petitioner/ Complainant to send the control sample of the drug from the same batch, for analysis to the Central Laboratory (Appellate Laboratory).

b. The Impugned order allowing Exhibit-D5 of the Respondent is passed without jurisdiction as the Magistrate is not vested with powers under Section 23 r/w Section 25 of the Act to direct a Laboratory to examine the control sample of the Accused or any sample other than the four portions of the sample collected under Section 23 of the Act.

10. The Advocate for the Respondent, Mr. Sahil Sardesai, supported the impugned orders, and contended that the Magistrate is within its powers under the Act to forward the control sample in possession of the Accused/Respondent, to the Central Laboratory for analysis, and more so in this case since the control sample submitted by the Accused/Respondent was of the very batch to which the drugs attached and analysed by the State Government's Analyst, belonged.

CONSIDERATION

11. Before proceeding to examine the rival submissions, reference must be made to certain provisions of the Act, Relevant to the case before me:

“ 23. Procedure of Inspectors. -(1) Where an Inspector takes any sample of a drug for cosmetic) under this Chapter, he shall tender the fair price thereof and may acquire a written acknowledgement therefor.

(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug for cosmetic] under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug [or cosmetic] for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug [or cosmetic] is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug for cosmetic] is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug for cosmetic] be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:-

(1) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug for cosmetic]; and

(ii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18-A.]

(5) Where an Inspector takes any action under clause (c) of section 22-

(a) he shall use all despatch in ascertaining whether or not the drug for cosmetic) contravenes any of the provisions of section 18 and, if it is ascertained that the drug for cosmetic) does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug [or cosmetic], he shall as soon as may be, inform la Judicial Magistrate] and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug [or cosmetic], he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

[(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform la Judicial Magistrate) and take his orders as to the custody thereof.]

25. *Reports of Government Analysts.*-(1) *The Government Analyst to whom a sample of any drug for cosmetic) has been submitted for test of analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.*

(2) *The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been prosecution in respect of the sample.*

(3) *Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken for the person whose name, address and other particulars have been disclosed under section 18-A1 has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.*

(4) *Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug for cosmetic] produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.*

(5) *The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."*

12. Section 23 of the Act, contemplates that where an Inspector takes any sample of a drug, for the purpose of test for analysis, he is required by provisions of Sub-section (4) thereof to divide the sample into four parts of which one portion so divided, should be restored to the person from whom it was taken, and shall retain the remaining three portions, of which the first is to be sent to the Government analyst for an analysis, the second shall be produced in court before whom the proceedings may be instituted and the third part shall be sent to the person whose name and particulars have been disclosed under section 18-A of the Act.

13. Under Section 18-A of the Act, the name of the person from whom the drug was acquired is required to be disclosed to the Inspector by the person from whom the sample was taken.

Going by the scheme of Section 23, therefore, the first portion of the sample was to be restored to the ESI Dispensary, Verna, from whose possession the sample of drug was drawn by the Inspector. This was done by the Inspector on 03.08.2018; further in accordance with the requirements of clauses (i) to (iii) of Sub-section (4) of Section 23, the Inspector was required to send one portion of the sample forthwith to the Government Analyst for analysis which was complied with by sending this portion to the Government Analyst, Goa in the Food and Drugs Laboratory who analysed the same and under report dated 13.08.2018, declared the sample to be not of

standard quality.

14. The second portion was produced before the Magistrate along with the complaint filed on 17.01.2019, as stated in paragraph 9 of the complaint. The third portion was sent to the Accused, manufacturer (Respondent herein), after the report of the Government Analyst was forwarded, to the Medical officer of the ESI Dispensary and to the manufacturer (Accused). The name of the manufacturer was disclosed by the medical Officer of the ESI Dispensary as required under section 18-A of the Act as being the person from whom the drug was acquired.

15. It is a matter of record that on receipt of the test report of the State Analyser, the manufacturer/ Accused by letter dated 27.12.2018, informed the Complainant that their test report conducted on the batch product before marketing the drug, disclosed that the drug passed all tests. The letter also claimed that the manufacturer's Control Sample passed all parameters. It was the contention of the Complainant that since the Accused/Respondent had neither stated that they agreed with the report nor stated in their letter that they intended to challenge the report by adducing evidence to controvert the report, the Complainant/Inspector requested the Court to forward the portion of the sealed sample produced before the Court (the second portion) to the Director, Central Drugs

Laboratory, Kolkata, before the date of expiry on its label, thereby invoking the provisions of Section 25 of the Act.

16. In response to the application filed in this behalf, which is dated 17.01.2019, Exhibit-1C of the file of the Magistrate, the Accused/Respondent did not oppose the grant of the complainant's application to send the second portion for analysis by Central Laboratory; in its reply dated 30.03.2019 at Exh-D5 before the Magistrate, it also admitted that it had received the report of the Government Analyser along with one sealed portion of the sample which had reached intact to the Accused/Respondent. However, whilst requesting the Court to send the packed portion received by the Accused to the Central Laboratory, Kolkata (prayer 1), it also requested the court to direct the Complainant to send the "Control Sample" of the drug from the same batch in possession of the Accused at its laboratory in Madhya Pradesh, for analysis, to the Central Drugs Laboratory, Kolkata.

17. The question is whether the Magistrate has the jurisdiction to direct the Petitioner/Complainant, to get the Control Sample of the batch of the drug in possession of the Accused, analysed by the Central Laboratory, and have the same produced as evidence before the Magistrate. For that purpose, the provisions of Section 25 of the Act assume importance.

Under Sub- Section (1) of Section 25, the sample tested under

Sub-section (4) of Section 23, by the Government Analyst, is required to be delivered to the Inspector who delivers one portion of the same under Sub-section (2) thereof, to the person whose name was disclosed under Section 18-A of the Act. In this case, the report was furnished to the manufacturer from whom the drug was acquired. Under Sub-section (3) of Section 25, the report of the Government Analyst shall be evidence of the fact stated therein and shall be considered conclusive, unless, the manufacturer/Accused (as in this case under Section 18-A) has, within 28 days of receipt of the report notified the Inspector in writing or before the Court where the proceedings are pending, that he intends to adduce evidence to controvert the report.

18. In the present case, by filing the reply seeking to have the third portion (and not the Control Sample) in possession of the Accused analysed by the Central Drugs Laboratory, the Accused has clearly chosen to controvert the report of the Government Analyst by adducing its own evidence. Reading of Sub-section (4) of Section 25, however, only authorises the Magistrate and empowers it to send for analysis to the Director of a Central Drugs Laboratory, the portion of the sample in its possession (in this case, the second portion), and not any other sample, including the control sample in possession of the Accused. This is so, since the Accused is given the opportunity to have a portion of the very sample taken and lodged in the Court analysed by the Central Laboratory, and the report of such Central

Laboratory shall be treated as conclusive evidence of the facts stated therein. The Accused, of course, is always at liberty to lead its own evidence, including by examining their own Analyst and producing the control sample, but the provisions of subsection (4) do not empower the Magistrate to exercise powers to get the control sample of the Accused to be analysed by the Central Laboratory.

19. In the present case, whilst allowing the application of the Complainant and directing the Director, Central Drugs Laboratory to analyse the sample lodged in the Court (sent to the Central Laboratory vide the Magistrate's letter dated 06.05.2019 in Form I, under Rule IV of the Drugs and Cosmetics Rules, (by order dated 06.05.2019 passed on the Complainant's application Exhibit 1-C), the Magistrate has also, contrary to the provisions of Sub-section (4) of Section 25, in an unreasoned cursory order allowed the application at Exhibit D-5 of the Accused, directing the control sample of the Accused also to be sent. This order totally dehors the powers vested in the Magistrate under Sub-section (4) of Section 25 of the Act.

20. What compounds the situation even further is that the Central Drugs Laboratory has, vide its report dated 27.05.2019, sent to the Magistrate its analysis, and opined that the second portion of the sample sent by the Magistrate is not of standard quality as defined under the Act, citing specific reasons and the methodology employed in its test. This report under Sub-section (4) of Section 25 shall be

conclusive evidence of the facts stated therein, and in the light of the provisions of Section 25 read with Section 23, would require the Accused to controvert this evidence.

21. The Revisional Court has proceeded in examining the impugned order passed by the Magistrate without referring to the specific provisions of Section 25 of the Act. It proceeded to hold that the Act provides and gives a discretion to the Magistrate to forward on its own motion, or on request of the party, the sample to the Central Laboratory for re-testing. The Sessions Court, therefore, proceeded on the assumption that the sample which the accused requested to be sent for testing was one of the three portions collected by the Inspector, when factually this was not the case. What the Accused requested was for its own control sample to be sent for analysis to the Central Laboratory, for which the Magistrate has no powers vested in him under Sub-section (4) of Section 25. There is no such discretion in the Magistrate under these provisions as held by the Sessions Court, for which reasons, both impugned orders are required to be quashed and set aside.

22. For the reasons stated above, I pass the following Order:

- a) The impugned order dated 20.11.2019 passed by the Principal Sessions Judge, South Goa, Margao, in Criminal Revision Application No.46/2019 is quashed and set aside;

b) So also the order dated 06.05.2019, insofar as it allows application at Exhibit D-5 (reply dated 30.03.2019 of the Respondent with prayers 1 and 2 therein) is also quashed and set aside and the application at Exhibit D-5 stands dismissed.

c) The Judicial Magistrate First Class at Margao shall proceed with the hearing of the case, i.e. Criminal Case No. AOA/83/2019/G, in accordance with law.

VALMIKI MENEZES, J.