

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.Nos.18666, 18667, 18668 and 18669 of 2015  
and M.P.Nos.1 and 2 of 2015 (4CrIOPs)

1.Centurion Laboratories,  
Division of Centurion  
Remedies Private Limited,  
G/5, 6 & F-19, Industrial Estate,  
Gorwa, Vadodara-390 016,  
rep.by its Director  
Mr.Dhruval J Patel

2.Mr.Dhruval J Patel,  
Director,  
Centurion Laboratories,  
G/5,6 & F-19,Industrial Estate,  
Gorwa, Vadodara-390 016. ... Petitioners in CrIOP No.18666 of 2015

1.Mr.Kishore Kumar Maganlal Chudgar,  
Manufacturing Chemist,  
Centurion Laboratories,  
Division of Centurion Remedies Private Limited,  
G/5, 6 & F-19, Industrial Estate,  
Gorwa, Vadodara-390 016. ...Petitioner in CrIOP No.18667 of 2015

Mrs.Nikitaban Vimal Kumar Vyas,  
Analytical Chemist,  
Centurion Laboratories,  
Division of Centurion  
Remedies Private Limited,  
G/5, 6 & F-19, Industrial Estate,  
Gorwa, Vadodara-390 016. ...Petitioner in CrIOP No.18668 of 2015

Mr.Prinyanka Rajesh Chandra Pancholi,  
Analytical Chemist,  
Centurion Laboratories,  
Division of Centurion  
Remedies Private Limited,  
G/5, 6 & F-19, Industrial Estate,  
Gorwa, Vadodara-390 016. ...Petitioner in CrIOP No.18669 of 2015

Vs

State rep.by  
The Drugs Inspector,  
Dharmapuri Range,  
O/O.The Assistant Director of  
Drugs Control,  
Salem Zone,  
No.7, Thiruvalluvar Street,  
Subramaniya Nagar,  
Salem-8.

...Respondent in all CrIOPs

Prayer in all CrIOPs:- Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records in PRC No.8 of 2015 on the file of the learned Judicial Magistrate No.II, Dharmapuri, and to quash the same in respect of the petitioners.

For Petitioners :Mr.N.S.Nandakumar

For Respondent :Mr.C.Emalias  
Additional Public Prosecutor

#### ORDER

These petitions have been filed to quash the proceedings in PRC No.8 of 2015 on the file of the learned Judicial Magistrate No.II, Dharmapuri.

2.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent and perused the materials placed on record.

3.It is the case of the prosecution that on 22.08.2014, the Drugs Inspector has drawn samples of Oxytetracycline Hydrochloride Solution from Government Veterinary Dispensary, Nallampalli, Dharmapuri District, and sent the same for analysis to the Government Analyst (Drugs), Drug Testing Laboratory, Chennai, under Form-18 on 22.08.2014. The Drug was tested by the Government Analyst and the Test Report dated 08.01.2015 declared that the same is Not of Standard Quality, for the reason that the sample does not conform to Oxytetracycline Hydrochloride Solution with respect to General Description and Identification.

4.The Drugs Inspector made enquiries with various Government Departments and ultimately found that the said drug was manufactured by the 1<sup>st</sup> accused herein in their Laboratory at Gujarat. Therefore, the Drugs Inspector went to the Laboratory of the 1<sup>st</sup> accused Company in Gujarat along with Mr.A.H.Zala, Senior Drugs Inspector, FDCA, Baroda, attached to the Drugs Department of the Government of Gujarat, on 28.04.2015. The Laboratory was inspected and it was observed that the 1<sup>st</sup> accused Company is purchasing the raw materials from another Company by name Century Pharmaceutical Limited in Gujarat by using which the product under enquiry was being

manufactured. In the complaint, the Drugs Inspector has clearly stated as follows:

"B.The Firm has blended four different batches of OXYTETRACYCLINE HCL I.P. as mentioned in the table for the manufacture of the said drug."

Thus, from the above, the Drugs Inspector has collected materials to show that the manufacturer has purchased the raw materials and it is not being properly blended for the manufacture of the product in question so that it satisfies the requirements of the standards set by law.

5.Mr.N.S.Nandhakumar, learned counsel for the petitioners submitted that the 1<sup>st</sup> accused has supplied the product to the State Government, and at the time of purchase, the Authorities have tested it in a Laboratory and accepted the consignment only after it conformed with the Standard quality. The report on which Tamil Nadu Medical Services Corporation Limited has relied upon, has been issued by a Private Laboratory viz., Sophisticated Industrial Materials Analytic Labs. Pvt, Ltd.

6.In the considered opinion of this Court, this report cannot be the basis for quashing the prosecution by this Court under Section 482 of the Code of Criminal Procedure.

7.The accused were given a show cause notice and they contended that the sample was not tested according to certain protocols. Therefore, the Drugs Inspector requested the Government Analyst to conduct quantitative estimation of the subject drug and obtained an addendum report on 31.03.2015, in which it is stated as follows:

"... estimation of Oxytetracycline Hydrochloride assay is found to be NIL."

8.The learned counsel for the petitioners assailed the addendum report by contending that it is not open to the Drugs Inspector to ask for a further report. This Court is unable to countenance this argument because, investigation is a continuous process and the Investigating Officer is perfectly entitled to call for further reports from an expert in order to satisfy whether there is a ground for prosecuting the accused. Hence, this action by the Drugs Inspector cannot be faulted.

9.During the course of inspection by the Drugs Inspector, at the 1<sup>st</sup> accused manufacturing Unit, he found that the constitution of the 1<sup>st</sup> accused is as follows:

"2.Constitution: The firm is private limited concern. Mr.DHRUVAL J PATEL and Mr.AMBALAL V PATEL, are the directors of the firm. Mr.DHRUVAL J PATEL

of the firm is looking after over-all manufacturing and testing activities. He was present at the time of inspection. As per the Form 26 & Form 28, Mr.KISHORKUMAR MAGANLAL CHUDGAR have been employed as manufacturing chemist. Mrs.NIKITABAN VIMALKUMAR VYAS and Miss.PRIYANKA RAJESHCHANDRAN PANCHOLI have been employed as analytical chemist for Microbiology testing and Chemicals & Physico chemical testing respectively."

10.After the complaint was filed, the product was once again referred to the Central Drugs Laboratory, Calcutta, through the Court of Judicial Magistrate No.II, Dharmapuri, as the accused disputed the report of the State Government Analyst, under Section 25(4) of the Drugs and Cosmetics Act. The report received from the Central Drugs Laboratory has not improved the case of the accused in any way and it is only further found that the subject drug does not satisfy the prescribed standards.

11.In the teeth of such an overwhelming materials, this is not a fit case to interfere for quashing the entire prosecution against the accused, in the light of the law laid down by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal reported in 1992 Supp (1) SCC 335.

In the result, these Criminal Original Petitions are devoid of merits and accordingly, dismissed. It is always open to the accused to raise these points before the trial Court during the trial. Consequently, connected Miscellaneous Petitions are closed.

mps

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Judicial Magistrate No.II,  
Dharmapuri.
2. -do- thro' Chief Judicial Magistrate,  
Salem.
- 3.The Drugs Inspector,  
Dharmapuri Range,  
O/O.The Assistant Director of Drugs Control,  
Salem Zone,  
No.7, Thiruvalluvar Street,  
Subramaniya Nagar, Salem-8.

4.The Public Prosecutor,  
High Court, Chennai.

+ 4 ccs to Mr.N.S.Nandakumar, Advocate SR 39202 to 39205

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CrI.OP.Nos.18666, 18667,  
18668 and 18669 of 2015  
&M.P.Nos.1&2of 2015(4CrIOPs)



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