

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23-9-2015

Pronounced on : 5-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.23703 of 2015
M.P.Nos.1 & 2 of 2015

1. Sumit Kumar,
2. Ashwani Singla ... Petitioners

Vs.

The State of Tamilnadu, rep.by
The Drugs Inspector,
Manali Range,
O/o.The Assistant Director of Drugs Control,
Zone IV,
Chennai - 600 006. ... Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records pertaining to C.C.No.225 of 2014 on the file of the Chief Judicial Magistrate, Tiruvallur, Tiruvallur District and quash the entire proceedings as against petitioners (A2 and A3).

For Petitioners : Mr.S.V.Udhayakumar
Mr.T.R.Ravi

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The case of the prosecution as disclosed in the complaint filed by the Drugs Inspector is as follows:

"It is humbly submitted that Tmt.S.Dhanalakshmi (PW1) The Drugs Inspector of Manali Range had drawn a sample of Acimol (Aceflofenac with Linseed oil, methyl salicylate & Menthol gel), Batch No.RG 461, Date of Mfg.07/2013, Date of Exp.09/2014, Mfg.by M/s.Curetech Skin Care, Plot No.34, Phase-IV, Bhatoli Kalan, Distt.Solan (HP) from the premises of M/s.Omsakthi Medicals, 192, Ground Floor,

Padasalai Street, Manali, Chennai-68. The said samples was reported as Not of Standard quality in the report No.06305-D/2013-14, dt.07/04/2014 by the Govt.Analyst (Drugs), Chennai-06, for the reason that the sample does not conform to label claim with respect to the content of Aceclofenac (25.67%).

The Drugs Inspector, Manali Range has sent a letter dated 09.04.2014 to M/s.Omsakthi Medicals, 192 Ground Floor, Padasalai Street, Manali, Chennai-68 from whom the sample was drawn, requesting to disclose the name and address of the person from whom they acquired the subject drug as per Section 18A of the said Act and also requested to furnish the purchase, stock on hand, distribution particulars etc., of the impugned drug. A copy of report in Form 13 was sent as per section 25(2) of the said Act. In the reply dated 09.04.2014 M/s.Omsakthi Medicals, 192 Ground Floor, Padasalai Street, Manali, Chennai -68 in their explanation have disclosed that the said drug was purchased from M/s.Raj Agencies, 3/58 Nyniappa Naicken Street, Ganesh Plaza, Parktown, Chennai, vide invoice No.sk 000578 dated 09.01.2014 of quantity 15 No and the stock on hand was nil. Hence, a show cause memo dated 10.04.14 was sent to M/s.Raj Agencies, 3/58 Nyniappa Naicken Street, Parktown, Chennai, and he obtained from M/s.Munot Pharmaceuticals.

Hence a show cause memo dated 16.04.14 has been issued by the Drugs Inspector, Manali Range to the M/s.Munot Pharmaceuticals, Old No.5, New No.118, Nyniappa Naicken Street, Parktown, Chennai - 600003 required to disclose the name and address of the person from whom they acquired the subject drug as per Section 18A of the said Act. In response to the memo, they had disclosed the purchase particulars and stated that they have acquired the subject drug from M/s.Appolo Medical Agencies, 71/54, First Floor, Naicker New Street, Madurai-625001 under invoice No.DB02543 dated 28.09.2013, of quantity 165 Nos and the stock on hand was nil.

Hence on 25.04.2014 a show cause memo was sent to M/s Appolo Medical Agencies, 71/54, First Floor, Naicker New Street, Madurai -625001 required to disclose the name and address of the person from whom they acquired the subject drug as

per Section 18A of the said Act. In response to the memo, in the reference they had disclosed the purchase particulars and stated that they have acquired the subject drug from M/s.Leeford Healthcare Limited, Leo House, Dugri-Dhandra Road, Saheed Bhagat Singh Nagar, Near Joseph School, Ludhiana (PB-141116 under invoice No.ST-945 dt.30.08.2013, of quantity 450 Nos and no ST-1019 dt.12.09.2013 of quantity 450 Nos.(Total 900 Nos) and the stock on hand was nil.

A show cause memo dated 06.05.14 was issued by the under signed to M/s.Leeford Healthcare Limited, Leo House Dugri-Dhandra Road, Saheed Bhagat Singh Nagar, Near Joseph School, Ludhiana (PB)-141116 required to disclose the name and address of the person from whom they acquired the subject drug as per Section 18A of the said Act. In response to the memo, they had disclosed the purchase particulars and stated that they have acquired the subject drug from M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) under invoice No.00494 dt.22.07.2013, of quantity 19603 Nos.

Based on the reply submitted by M/s.Leeford Healthcare Limited, Ludhiana (PB)-141116, a letter in the ref.No.1776/DI/MAN/2014 dated:23.05.2014 was issued to M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) and required them to disclose details of records and documents pertain to the manufacture of the Not of Standard quality drug Acimol gel (Aceflofenac with Linseed oil, methyl salicylate & Menthol gel), Batch No.RG 461, Date of Mfg.07/2013, Date of Exp.09/2014, asper Section 18B of Drugs and Cosmetics Act 1940 and the third portion of the sample was sent to the manufacturer as per the section 23(4)(iii) of the Drugs and Cosmetics Act, 1940, by registered parcel services.

There was no reply received from the above said manufacturer. Hence, it is requested for Manufacture Level investigation under ref No.1776/DI/MAN/2014 dated:17.06.14. The Director of Drugs Control, Chennai-06 permitted to conduct investigation at Manufacture Level under Ref.No.178/IW-3/NSQ-261/2013-2014. The Drugs Inspector, Manali Range carried out the

Manufacture Level investigation at M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) on 04.07.14. The manufacturer M/s.Curetech Skincare, Plot No.34, Phase-IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) in their reply letter dated 04.07.14 have submitted that manufacturing license with endorsement copy, other manufacturing records of subject drug, constitution particulars and distribution details etc. They have stated that their quality control department examined and tested samples of Acimol (Batch No.-RG 461) from their controlled samples with all the quality standards and the content of Aceclofenac was found to be within specified limit as per label claimed. They have also stated that in the analysis of said drugs testing procedure was never asked from them, acimol (Batch No-RG 461) is manufactured in full compliance to prevailing GMP standards and they are confident of the product quality. They have also stated that they do not agree with the analysis report of Govt Analyst due to procedural violation of the procedure as described by Rule 46 of Drugs and Cosmetics Rules 1845 and further within stipulated period of 28 days intend to adduce evidence in contravention to the finding of Govt Analyst as provided under Section 25(iii) of Drugs and Cosmetics Act, 1940. The reply is not satisfactory.

Hence, M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP), have contravened Section 18(a) (i) of the drugs and Cosmetics Act, 1940, punishable under Section 27(d) of the said Act for having manufactured for sale and sold a Not of Standard Quality drug of Acimol (Aceflofenac with Linseed oil, methyl salicylate & Menthol gel), Batch No.RG 461, Date of Mfg.07/2013, Date of Exp.09/2014.

Therefore a detailed report was submitted by Drugs Inspector, Manali Range on 08.07.2014 to the Director of Drugs Control, Chennai-06, Tamil Nadu through the Asst.Director of Drugs Control, Zone-IV to prosecute.

1. M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) represented by its partners Thiru SUMit

Kumar, S/o.Sh.Perm Chand Singla and Thiru.Aswhani Singla, S/o.Late Sh.Des Raj Agarwal.

2. Thiru.Sumit Kumar, S/o.Sh.Perm Chand Singla, one of the partners of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

3. Thiru. Aswhani Singla S/o.Late Sh.Des Raj Agarwal, one of the partners of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

4. Thiru Jaysing Yamagekar, S/o.Mr.Arjun Yamagekar, Person to look after day-to-day activities of the company and authorized signatory of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

For the contravention of Section 18(a)(i) of Drugs and Cosmetics Act, 1940, made thereunder for having manufactured for sales and sold the drug Acimol (Aceflofenac with Linseed oil, methyl salicylate & Menthol gel) Batch No.RG 461 which is of Not of Standard Quality, which is punishable under Section 27(d) of the said Act.

The Director of Drugs Control, Tamilnadu, Chennai-6 under the reference R.Dis.No:11620/IW2/2014(144) dated 24.07.2014 has accorded sanction to prosecute

1. M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP) represented by its partners Thiru SUMit Kumar, S/o.Sh.Perm Chand Singla and Thiru.Aswhani Singla, S/o.Late Sh.Des Raj Agarwal.

2. Thiru.Sumit Kumar, S/o.Sh.Perm Chand Singla, one of the partners of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

3. Thiru. Aswhani Singla S/o.Late Sh.Des Raj Agarwal, one of the partners of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

4. Thiru Jaysing Yamagekar, S/o.Mr.Arjun Yamagekar, Person to look after day-to-day activities of the company and authorized signatory

of M/s.Curetech Skincare, Plot No.34, Phase IV, Bhatoli Kalan, Baddi, Tehsil-Nalagarh, Distt.Solan (HP).

For the contraventions of Section 18(a) (i) of Drugs and Cosmetics Act, 1940 made thereunder for having manufactured for sales and sold the drug Acimol (Aceflofenac with Linseed oil, methyl salicylate & Menthol gel) Batch No.RG 461 which is of Not of Standard Quality, which is punishable under Section 27(d) of the said Act."

Challenging the prosecution, Sumit Kumar (A-2) and Ashwani Singla (A-3) are before this Court.

2. Since M/s.Curetech Skincare disputed the Analysis Report given by the State Government Analyst, one of the samples was sent to the Central Drugs Laboratory, Kolkatta, and report dated 27.10.2014 has been received by the Chief Judicial Magistrate, Tiruvallur, which is still more incriminating. The Central Laboratory has opined that the sample is not of standard quality, and has further stated that it is spurious. Under the Drugs and Cosmetics Act, 1940, this report becomes conclusive and cannot be challenged further.

3. Mr.T.R.Ravi, learned counsel appearing for the petitioners/A-2 and A-3 submitted that when once the first accused Company appointed Jaysing Yamagekar as a person to look after the day-to-day activities of the Company, the petitioners cannot be prosecuted.

4. Per contra, Mr.C.Emalias, learned Additional Public Prosecutor produced the entire case file from where it is seen that M/s.Curetech Skincare is a partnership firm, in which Sumit Kumar (A-2) and Aswhani Singla (A-3) are partners. A partnership firm is not a juristic person and the partners cannot claim innocence in a proceedings for quashing prosecution. The skin oinment manufactured by M/s.Curetech Skincare has been found to be spurious and the petitioners cannot be left off the hook, on technical grounds. The standards applied for fastening vicarious liability in cases arising under Negotiable Instruments Act cannot be applied to prosecution of this nature, where a spurious drug has been manufactured and marketed by the first accused Company. In any event, the first accused Company is not a Company incorporated under the Companies Act, but a Partnership Firm, in which the petitioners are partners, and they cannot transfer criminal liability on the 4th accused and attempt to get away.

5. Mr.T.R.Ravi, learned counsel relied upon the judgment in Drugs Inspector v. Modern Drugs, Hyderabad, (1982 LW (Cr1) 108) and contended that each of the accused should have been furnished with the sample for the purpose of challenge before the Central

Laboratory. First of all, the above said case relates to an appeal from conviction imposed by the trial Court. That apart, in that case both Modern Drugs, Hyderabad, the manufacturer, and Sham Agencies (A-4), which was selling the drugs, were made as accused. In that context this Court held that the samples should have been given to each of the contesting firms.

6. In this case, the manufacturer is M/s.Curetech Skincare (A1) and sample was admittedly sent to A-1 Company. It is not necessary for the Drugs Inspector to send samples to all the partners in A-1 Company individually, for, that will lead to ridiculous results. Law cannot be interpreted in such a manner as to lead to absurd results.

7. The learned Counsel further relied upon the Judgment of this Court in M.N.A.Arumugha Perumal v. State (1984 LW(Crl.) 271) in which this Court was pleased to quash the prosecution as against the sleeping partners alone. Here both the petitioners are partners and there is no material to infer that they were sleeping partners. That apart, in the said Judgment this Court has clearly given a caveat in the last paragraph by saying, "However, in case during the course of trial if it is established that the petitioners accused were in overall charge of the business of A1 Company, they could be proceeded against."

8. In view of the above, this petition is devoid of merits and is accordingly dismissed. Connected miscellaneous petitions are also dismissed.

vr

-s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Drugs Inspector, Manali Range,
O/o.The Assistant Director of Drugs Control,
Zone IV, Chennai - 600 006.
2. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.S.V.Udayakumar, Advocate SR 54014

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Crl.O.P.No.23703 of 2015