

HON'BLE SRI JUSTICE RAJA ELANGO

Crl.P.No.10271 OF 2013

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.285 of 2010 on the file of the X Additional Chief Metropolitan Magistrate, Secunderabad.

The allegations in the complaint are as follows :

Accused No.1 is the company represented by Accused No.2. On 30-06-2007, the Drug Inspector picked up a sample of Doxyla-B6 forte tablets, batch No.DFS-701, Mfg., April 2007, expiry date March, 2009, manufactured by accused No.1 – company for the purpose of analysis. Later, the sample was sent to the Government Analyst, Hyderabad. By his report, dated 29-02-2008, the Analyst opined that the drug was of not of standard quality for the reason that the sample does not comply with the disintegration test as per I.P.96 Specifications under Enteric Coates tablets. On 14-03-2008, L.W.1 addressed a letter to M/s.Maneesh Health Care, D.No.1-1-771(626) Gandhi Nagar, Hyderabad, (L.W.2) to disclose the name, address and other particulars of the persons from whom they have acquired the said drug and furnish purchase invoice and other particulars. On receipt of information from L.W.2, L.W.1 addressed a letter dated 19-03-2008 to M/s.Maneesh Health Care, Retibundar Road, Bhiwandi, requesting them to confirm the sale to L.W.2. On 19-07-2008, L.W.4 addressed a letter to M/s.Maneesh

Health Care, Mumbai, requesting to furnish information under Section 18-A, 18-B and 22(1)(cca) of Act. On 31-07-2008, L.W.4 received reply from L.W.3 stating that they had procured from M/s.Saichem Pharma, Solan, Himachal Pradesh.

On 03-10-2008, L.W.4 addressed a letter to accused No.1 – company to confirm the sale and furnish drug license, but no reply was received up to 05-03-2009. Again, on 06-03-2009, L.W.5 addressed a letter to Accused No.1 – company to furnish information under Section 18(b) 22(1)(cca). On 07-04-2009 accused No.1 replied that their license for subject drug was suspended for a period of 15 days by the drug licensing authority, Drug Control Administration, Himachal Pradesh, dated 29-01-2009. On 14-07-2009, the Director General, Drug Control Administration, Hyderabad, issued a letter to take action as per guidelines vide RC.No.2627/M1A/OS/2009. Again, on 01-08-2009 and 30-09-2009, L.W.5 addressed a letter to accused No.1 requesting to confirm the manufacturer and sale of the subject drug. On 11-11-2009 accused No.1 replied stating that not to take any action. Therefore, on 21-01-2010, the Drug Inspector filed a complaint.

Heard the learned counsel for petitioners and the learned Public Prosecutor and perused the material available on record.

The learned counsel for petitioners submits that the sample was lifted on 30-06-2007 and the Analyst report is dated 29-02-2008 and complaint was filed on 21-01-2010 and the learned Magistrate took cognizance on 20-03-2010 by

which time the Drug has expired and the petitioners have lost a valuable right for sending the second sample to the Central Lab. It is further submitted that according to Section 25 (3) of the Act, the accused should have challenged the report furnished to him by the Complainant within 28 days of receiving the copy of the report. As per the record available, the accused received the report only after the expiry of the said drug. In fact, on 22-10-2008, the accused No.1 – company requested the Drug Inspector to send the sample of Doxila B6 Forte Tablets, for retesting of the same to the Central Drug Laboratory, Kolkata, but they have not sent the same for retesting.

It is not in dispute that the expiry date of the sample was March, 2009. Therefore, in any case, because of the expiry of the life period of the product or because of the failure of the complainant to take measures, the valuable right of the accused to prove their innocence was lost. Hence, in these circumstances, the impugned proceedings against the accused are untenable.

In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.285 of 2010 on the file of the X Additional Chief Metropolitan Magistrate, Secunderabad.

JUSTICE RAJA ELANGO

11th September, 2015

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