

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.2288 of 2011

Between :-

M.Sardarmal Chordia,
Parner, M/s.Medopharm,
34-B, Industrial Area,
Malur, Karnakta
Residing at H.No.2, Laxmi Road,
Shanthi Nagar, Bangalor
And others

.. Petitioners

And

The State of A.P.
Rep.by Drug Inspector,
Adilabad
Rep.by Public Prosecutor
High Court of A.P., Hyderabad

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 22nd July, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.2288 of 2011

ORDER:-

This petition is filed under Section 482 Cr.P.C., for quashing all further proceedings in C.C.No.77 of 2009 on the file of the I-Additional Judicial Magistrate of First Class, Mancherial (old C.C.No.4692 of 2005 on the file of the Judicial Magistrate of First Class, Luxettipet) filed by the respondent/complainant alleging offence under Section 18(a)(i) read with Section 16 (1)(a) punishable under Section 27 (d) of the Drugs and Cosmetics Act, 1940.

2. The allegations, in brief, are as under:-

The respondent/Drug Inspector, Adilabad, filed the complaint on the file of the Judicial Magistrate of First Class, Luxettipet. On 27-02-2002, the Drug Inspector (M.Srinivasulu) picked up a sample of Aspirin Tablets with Batch No.1001, which was manufactured in September, 2001 and was to expire by February, 2003 from the Medical Stores of Area Hospital, Singareni Collieries Company Limited, Ramakrishnapuram, Adilabad District (listed witness No.2), that necessary procedure was followed, that on 13-08-2002 the report was received from the Drugs Control Laboratory, Hyderabad, stating that the drug is not of standard quality, that the Drug Inspector issued a notice to the Medical Stores to disclose the source of supply. Accordingly, it was informed that the petitioners herein are the manufacturers. Notice was issued to the 4th petitioner/A.4 and the drug was recalled from all the stores, that the investigation established that the Aspirin tables manufactured by A.4 firm, of which A.1 to A.3 are the partners, does not comply the test for Salicylic Acid and thereby contravened the provisions of the Act.

3. On receipt of summons, the petitioners made their appearance in the case and filed a petition in CrI.M.P.No.106 of 2007 before the learned Magistrate to discharge them and that the said petition was dismissed on 15-05-2009 and that there was no progress in the

case, the present petition to quash all further proceedings is filed on the ground that the prosecution against them cannot be sustained for the violations of the provisions of the Act. It is contended that even according to the charge sheet, the complainant/ Drug Inspector- M.Srinivasulu was appointed as a Drug Inspector vide G.O.Ms.No.477, Health, Medical and Family Welfare (I-2) Department, dated 19-12-2002, and was published in the official gazette whereas the sample was lifted by him on 27-02-2002, therefore he was not competent to collect the samples. It is further contended that if the entire material is perused, it is manifest that due to the inordinate delay on the part of the complainant, the petitioners are deprived of getting the sample analysed since the shelf life of the drug expired by February, 2003. It is further contended that even though the complainant filed the charge sheet against the petitioners/A.1 to A.4, there is no averment to the effect that the petitioners/accused are in-charge and responsible for the day-to-day affairs of the firm.

4. On the other hand, learned Public Prosecutor submits that the complainant has followed the procedure and has launched the prosecution, that it is a matter of evidence as to whether the provisions of the Act have been complied with or not and that there are no grounds to quash the proceedings at the threshold.

5. In a case of this nature, the factual matrix need not be in dispute and is not. All the dates are admitted and there is no controversy whatsoever. The sample of the drug was lifted from the Medical Stores of one Surender, Singareni Collieries Company Ltd., Area Hospital, Ramakrishnapuram, Adilabad, who has been shown as the 2nd witness. He is not made an accused. The sample of Aspirin tablets was drawn and the same was sent for analysis. When the sample was drawn on 27-02-2002, the drug was manufactured by A.4 firm in September, 2001 and its expiry date was

February, 2003. After issuing notice and obtaining the requisite information, the complaint was filed before the jurisdictional Magistrate on 31-08-2004. As already stated, the expiry date of the drug was February, 2003 and when the complaint itself came to be filed on 31-08-2004, the petitioners were deprived of their legal right of getting the sample analysed by the Central Laboratory.

6. It is also noticed from the record that even according to the charge sheet, M.Srinivasulu was only a Junior Analyst but not a Drug Inspector who alone is competent to lift the samples. As already stated, even in the charge sheet, it is clearly mentioned that M.Srinivasulu has been appointed as Drug Inspector vide G.O.Ms.No.477, Health, Medical and Family Welfare (I-2) Department, dated 19-12-2002, published in A.P.Gazette with jurisdiction over the entire State of Andhra Pradesh. The said M.Srinivasulu has lifted the sample and conducted the investigation nearly 10 months prior to his being appointed as Drug Inspector. This act of the Junior Analyst in acting as Drug Inspector without his being appointed as such under the provisions of the Act.

7. Another aspect of the matter is that the complaint being silent about the role of A.1 to A.3. There are catena of authorities on this aspect which clearly lay down that the complaint should specifically aver and state the role of each of the persons sought to be prosecuted. Only such of the persons who are in-charge of the day-to-day affairs of an establishment, firm or Company, are liable to be prosecuted but not those who are not at all associated with the day-to-day affairs. In the instant case, even according to the charge sheet, A.1 to A.3 are the partners of the firm and A.4 is described in the charge sheet itself as representing A.1, A.2 and A.3. In support of this contention, learned Counsel appearing for the petitioners relied upon **NATIONAL SMALL INDUSTRIES CORPN.LTD. v. HARMEET SINGH PAINTAL**^[1] and **STATE OF KARNATAKA v.**

PRATAP CHAND^[2] which lay down the undisputed proposition that in the absence of a specific averment and allegation about the role played by each of the persons sought to be prosecuted, the complaint is not sustainable.

8. From the above narration of events, it is manifest that the complaint lodged by the complainant against the petitioners/A.1 to A.4 cannot be sustained and the same is liable to be quashed. The material violations being that it is Junior Analyst who has drawn the sample and commenced the investigation but not as Drug Inspector, that when the sample was lifted on 27-02-2002, and the drug was expired by February, 2003, the complaint came to be filed only in October, 2004 and there were no specific allegations attributing specific role to the petitioners/A.1 to A.4.

9. In the result, the Criminal Petition is allowed and the proceedings initiated against the petitioners/A.1 to A.4 in C.C.No.77 of 2009 on the file of the I-Additional Judicial Magistrate of First Class, Mancheri (old C.C.No.4692 of 2005 on the file of the Judicial Magistrate of First Class, Luxettipet) are hereby quashed.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

July, 2015
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^[1] (2010) 3 SCC 330

^[2] AIR 1981 S.C., 872