

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.1689 of 2013

ORDER:

Petitioners-Accused Nos.1 and 2 approached this Court with a prayer to quash the proceedings initiated against them in C.C.No.139 of 2011 on the file of the Judicial Magistrate of First Class, Parkal, Warangal District, wherein they are facing trial for the offences punishable under Sections 27(d) of the Drugs and Cosmetics Act, 1940 (for short 'the Act') for committing an offence under Section 18(a) (i) read with Sections 16 and 34 of the Act.

Heard and perused the material available on record.

The brief facts of the case are that the 2nd petitioner is a Drug Manufacturing Company and the 1st petitioner is the Proprietor of the 2nd petitioner. During the course of inspection of M/s.Pradhan Medical & General Stores, Bhupalpally, the Drug Inspector, Narsampet, Warangal, drew sample of Klozyme Syrup, manufactured by the petitioners company, and sent the same to the Government Analyst, Drugs Control Laboratory, Hyderabad. The Government Analyst sent the report stating that the Drug is not of standard quality and after receipt of the said report, the Drug Inspector filed a complaint against the petitioners for the above referred offences.

The learned counsel for petitioners submits that the sample was lifted on 10.04.2007 and the Analyst report was dated 30.07.2007 and the complaint was filed on 12.01.2011 and the learned Magistrate took cognizance on 20.04.2011 by which time the Drug has expired and the petitioners have lost the 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. To substantiate the said contention, the learned counsel for the petitioners relied upon the decisions of the Apex Court in **M/s.Medicamen Biotech Limited v. Rubina Bose, Drug Inspector**^[1] and **Northern Mineral Limited v. Union of India**^[2].

He further submitted that as per the record available, the accused received the report only after the expiry of the said drug. In fact, on 07.10.2007, the accused No.1 – company requested the Drug Inspector to send the sample of the subject drug, 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 January 2008. 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.139 of 2011 on the file of the Judicial Magistrate of First Class, Parkal, Warangal District.

Miscellaneous petitions pending in this criminal petition, if any, shall stand closed.

RAJA ELANGO, J

October 06, 2015.
KTL

[\[1\]](#) AIR 2008 Supreme Court 1939(1)

[\[2\]](#) 2010(2) ALD (Cri.)944(SC)