IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3138 OF 2015

Troikaa Pharmaceuticals Limited and Anr.	}	**Petitioners**
versus		
The State of Maharashtra and Ors.	}	**Respondents**

Mr. Navroze Seervai – Senior Advocate with Mr. Prasad Shenoy, Mr. Shriraj Dhruv and Ms. Heemal Desai i/b. M/s. Dhruv and Co. for the Petitioners.

Ms. P. H. Kantharia – Government Pleader for respondent nos. 1, 3 and 4.

Ms. Jyotsna Pandhi with Mr. Dushyant Kumar for respondent no. 6.

CORAM :- S. C. DHARMADHIKARI &
S.C.GUPTE, JJ.

DATED :- MARCH 18, 2016

P.C. :-

By this writ petition under Article 226 of the Constitution of India, the petitioners are seeking issuance of writ of certiorari or any other writ, order or direction in the nature thereof calling for the records pertaining to certain actions which are contained in Annexures 'J-1', 'J-2' and 'N' to this writ petition dated 15th May, 2014, 12th April, 2014 and a report of the 6th respondent dated 8th April, 2015.

2) Mr. Seervai appearing in support of the writ petition would submit that grave loss and prejudice would be caused to the petitioners in the absence of certain worksheets being not provided as they are vital. The petitioners' contention is that the findings and conclusions of the Government Analyst are unacceptable for the same samples were tested at private laboratories and their reports conclude that the petitioners have made all compliances with the statute in field, namely, the Drugs and Cosmetics Act, 1940 and the rules and regulations framed thereunder. The petitioners' drug and sample of which is tested is now withdrawn. Its life is expiring on 31st May, 2016. It is an antacid tablet, which is both, chewable as well as swallowable and gets dissolved. That is why it is more effective in treating acidity and heartburn etc. In these circumstances, and when the petitioners claim to be the only such manufacturer in the world, attempting to obtain the patent of the process that this court must issue the requisite writs as sought for.

3) In any event and without prejudice, it is submitted that the court should protect the petitioners against the findings and conclusions in the report of the Government Analyst by clarifying that the same would not be read in evidence unless the petitioners are given full opportunity to contradict and contravene the contents thereof and if necessary by process of

cross examination in the impugned proceedings and which are for imposition of penalty under the Act.

4) Ms. Kantharia appearing for the State submits that the writ petition is pre-mature. She says that a complaint has been filed in the court of the Judicial Magistrate First Class, 3rd Court, Bhiwandi. Regular Criminal Case No. 908 of 2015 has been registered. Petitioner no. 2 is accused no. 1 and together with even petitioner no. 1 company and two others are arrayed as accused. The charges are indeed serious and under section 18(a)(i) read with section 16 of the Drugs and Cosmetics Act, 1940 are punishable under section 27(d) read with section 34 thereof. Upon handing over a copy of this complaint to us, she states that the list of witnesses include the Government Analyst and the Drug Inspector as well. Even documents which are to be filed, with the permission of the court, can be inspected before any effective cross examination is conducted, on request of the petitioners. Thus, they have full opportunity to justify their actions and meeting contents of the report of the Government Analyst. At this stage and the matter being pertaining to a drug meant to treat acidity, this court should not interfere in its discretionary and equitable jurisdiction under Article 226 of the Constitution of India.

5) Upon hearing both sides and perusing the writ petition and relevant annexures, we are of the view that the petitioners are essentially controverting and seeking to contradict the contents of a report. That report, under the signature of the Director In-charge, Central Drugs Laboratory dated 8th April, 2015, is pursuant to a testing carried out on 3rd March, 2015. It is common ground that this report has been filed in the court of the said Magistrate. The complaint that is filed against the petitioners alleges specifically that the Drug Inspector, Thane visited the premises of petitioner no. 1 on 25th July, 2013 and drew a sample of the subject tablet. The Drug Inspector has sent one portion of the said drug along with memorandum in Form No.18 to the Government Analyst, Maharashtra State, Mumbai. On 5th May, 2015, the Drug Inspector received the report of subject drug and which reported the drug as not of the standard quality. Then, this copy of the report was given to the petitioners and a notice was issued under section 18A and section 22(1)(cca) of the Drugs and Cosmetics Act, 1940. The petitioners were also called upon to disclose the source of purchase of said drug. Thereafter, the disclosures were made by the other accused and the sealed sample was relied upon together with the report to issue a notice calling upon the petitioners and the manufacturer in the State of Uttarakhand to submit required documents.

Thereafter, petitioner no. 1 company acknowledged the receipt of the letter, Government Analyst report and sealed sample portion of subject drug. Thereafter, further steps were taken as are enumerated in the complaint. An order to prosecute was issued by the Joint Commissioner (H. Q.) and Controlling Authority, Food and Drug Administration, Maharashtra State, Mumbai on 20th May, 2015. That is how the contents of para 18 of the complaint have been relied upon to allege that if the manufacture, for sale or distribution or stock or exhibition or offer for sale or distribution, of any drug not of standard quality or misbranded or adulterated or spurious, then, that attracts, according to the complaint, section 16 and 27(d) of the Drugs and Cosmetics Act, 1940. It is upon such a complaint and which is now pending before the said Magistrate that the petitioners seek reliefs and Mr. Seervai would submit that this court, in its inherent jurisdiction should cause another report to be forwarded by an independent agency or expert in the field so that neither the so called interested version of the petitioner or the version of the Government Analyst forms the basis of a prosecution. If such report is adverse to the petitioner, then, the petitioner would face all the consequences in accordance with law.

6) The second request is that the worksheets, which have been considered by the Government Analyst, copies thereof be made available to the petitioners.

7) We are of the opinion that section 18 of the Act enacts a prohibition of manufacture and sale of certain drugs and cosmetics and from such date as may be fixed by the Government by notification in the official gazette in this behalf, no person shall himself or by any other person on his behalf manufacture for sale or for distribution, or sell, or stock or exhibit any drug which is not of a standard quality or is misbranded, adulterated or spurious. That attracts, according to the respondent and the original complainant the provisions which prescribe penalty. Now, the penalty provision and which is relied upon is section 27. Section 27 clarifies that it is a penalty for manufacture, sale etc. of drugs in contravention of Chapter IV of the Act. Therefore, whoever, by himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes such drug invites the penalty. In the present case, what is alleged is that the sale or distribution of any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be

punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees. The proviso says, the court may for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

8) It is common ground and not disputed also that the complaint which is filed in the court of the Judicial Magistrate First Class would have to be tried and decided in accordance with the Code of Criminal Procedure, 1973. Sections 36 and 36A of the Drugs and Cosmetics Act, 1940 clarify this position.

9) In the present case, we have no doubt that once the report of the Government Analyst has been forwarded to the Judicial Magistrate, then, before the Judicial Magistrate proceeds further and reads the documents in evidence, he will ensure that there is full compliance made with the principles of natural justice which are inbuilt as well in the Code of Criminal Procedure, 1973. Meaning thereby, the petitioners will have full opportunity to inspect any worksheet or other relevant documents. A copy of the report has already been furnished to the petitioners. Therefore, at the trial before the Magistrate, the petitioners can raise all contentions including that the said report

should not be relied upon to impose any penalty. They would have full opportunity to satisfy the Magistrate that the report does not indicate that any drug, which is not of the standard quality, has been manufactured or sold by the petitioners. In these circumstances, we cannot accept the request and either of them as contained in the prayer clauses (a) and (b). By clarifying that all contentions and in relation to not only seeking copies of the worksheets but also merits of the controversy are kept open and this court expresses no opinion thereon, we dispose of the writ petition.

(S.C.GUPTE, J.) (S.C.DHARMADHIKARI, J.)