

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2872 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A.1 and A.2 seek to quash the proceedings in C.C.No.75 of 2010 on the file of II Additional Judicial First Class Magistrate, Nellore wherein they were charged for contravention of Section 18(a)(i) r/w Sec16, 18-B and 22(1) (cca) punishable under Sec.27(d), 28 and 22(3) respectively of the Drugs and Cosmetics Act, 1940 (for short "the Act").

2) The brief facts of the case are thus:

a) The prosecution case is that A.1 and A.2 are responsible for manufacture and sale of not of standard quality Drug Kondanzen-D tablets and also failed to produce batch manufacturing records of the subject drug, drug licences of A.1 company along with constitution details of the A.1 Company. On 28.10.2006, LW.1—Drug Inspector, Nellore lifted sample of drug Kondanzen-D tablets B.No.T605101, Mfg dt.05/06, Exp.dt.04/08 manufactured by M/s.Scott Edil Pharmacia Ltd., Baddi (A.1) for the purpose of analysis vide Form 17 dt:28.10.2008 from the Medical Stores, DM & HO office, Santhapet, Nellore in the presence of pharmacy Supervisor (LW2). The Government Analyst, Drugs Control Laboratory, Hyderabad vide his report in Form 13 bearing No.2496/DCL/2007 dt.13.08.2007 declared as the sample does not meet the labeled claim in respect of Serratiopeptidase

content (found 1.9 mg/10mg). The further case of prosecution is that upon the verification with successive purchasers, the complainant could ultimately know that the accused are the manufacturers of the subject drug. Hence the letters were addressed to the accused. On receipt of the letters dt:14.05.2008 and 31.07.2009 under Sec.18-B and 22(i)(cca) of the Act along with report in Form 13, the manufacturer M/s.Scott Edil Pharmacia Ltd., Baddi vide their letters dt:23.05.2008 and 21.08.2009 has informed that they could not challenge the report in Form-13 of the subject drug as the subject drug was expired in the month of April, 2008 and failed to produce batch manufacturing record, distribution details of the subject drug, drugs licence of A.1 company and constitution details of the A.1 company. Hence the complaint by the Assistant Director and Drugs Inspector, Nellore against the accused for contravening the provisions under Section 18(a)(i) r/w Sec16, 18-B and 22(1) (cca) punishable under Sec.27(d), 28 and 22(3) respectively of the Act.

Hence the instant petition to quash the proceedings.

3) Heard arguments of learned counsel for petitioners and learned Public Prosecutor for the State (A.P).

4) As can be seen from the complaint, the subject drug Kondanzen-D tablets Batch No.T605101 was manufactured in May, 2006 and its Expiry Date was April, 2008. The sample was lifted on 28.10.2006. The complaint further shows that admittedly notices under Sec.18-B and 22(1)(cca) of the Act

were issued on 14.05.2008 and 31.07.2009 i.e, after the expiry of the shelf life of the subject drug. The complaint was filed on 30.11.2009. The aforesaid chronology of the events would show that the complaint was filed with a considerable delay after lifting the sample of the drug. Needless to emphasize that in view of the inordinate delay in filing the complaint, the petitioners/accused are deprived of their valuable right under Sec.25(3) and (4) of the Act to avail the remedy of sending the sample for reanalysis. In similar circumstances, this High Court in Crl.P.No.13449 of 2010 having relied upon the decision of the Apex Court reported in ***Medicamen Biotech Limited and another vs. Rubina Bose, Drug Inspector***^[1], quashed the proceedings. The above decision cited by learned counsel for petitioners in my considered view squarely applies to the facts of the instant case because like in the above case, in the present case also the petitioners/accused lost valuable right of sending the sample for reanalysis. Since the shelf life of the subject drug was expired in April, 2008 and complaint was filed much later, the question of sending the sample to the Central Drugs Laboratory would be of no use. Therefore, in my considered view, the continuation of the proceedings would amount to sheer abuse of process of the Court.

5) In the result, this Criminal Petition is allowed and proceedings in C.C.No.75 of 2010 on the file of II Additional Judicial First Class Magistrate, Nellore are quashed against petitioners/A.1 and A.2.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 30.06.2016
scs

[\[1\]](#) (2008) 3 SCC (CrI.) 20