

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.1250 of 2010

ORDER:

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This petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioners-A1 and A2 in C.C. No.36 of 2009 on the file of the court of Additional Judicial Magistrate of First Class, Nizamabad.

2. The contention of learned counsel for the petitioners is that the report of the Government Analyst is in conformity with the guidelines of the Indian Pharmacopoeia, 1996 (for short, IP-1996) issued by the Government of India, Ministry of Health & Family Welfare, New Delhi. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no case is made out against the petitioners. ***Per contra***, learned Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

3. A perusal of the record reveals that the petitioners are A1 and A2 and the respondent—the Drugs Inspector, Nizamabad, is complainant in C.C. No.36 of 2009.

4. The facts leading to filing of the present petition are briefly as follows: The second respondent visited the premises of the petitioners on 24.4.2007 and drawn drug sample, Homex-DT Tablets, B.No.HDT 60701 Mfg.7/2006 Exp.06/2008 Manufactured by M/s.Aditus Laboratories Limited, 22 Phase-I, IDA, Cherlapally, Hyderabad – 500051. On suspicion, the second respondent sent the tablets to Government Analyst, Drugs Control Administration, Hyderabad for analysis and report. On 24.11.2007, the second respondent received the report from the Government Analyst declaring that “*the above said drug as not of Standard Quality Drug as the sample does not comply with the test for uniformity of weight.*” On 12.12.2007, the second respondent addressed letter to the petitioners requesting them to

disclose source of supply under Section 18-A of the Drugs and Cosmetics Act, 1940 (the Act) and other information regarding purchase and sale of subject batch No. Drug. On 19.12.2007, the second respondent received reply. Hence, the complaint.

5. The petitioners are facing trial for the offence under Section 22(1) (cca) of the Act. The crucial question that falls for consideration is whether the allegations made in the complaint *prima facie* constitute the offence alleged to have been committed by the petitioners or not.

6. The opinion of the Government Analyst is as follows:

“In the opinion of the undersigned the sample referred to above of NOT OF STANDARD QUALITY as defined in the Drugs and Cosmetics Act, and Rules thereunder, the reason is given below:

REMARKS: Does not comply the test for Uniformity of Weight as described.”

A perusal of the record reveals that the petitioners have given reply to the second respondent. The relevant portion is as follows:

“We request to kindly note that we are not questioning the Analytical report issued by the Government analyst. We are only objecting the sample collected from one point is not fit for the test for uniformity of weights.”

A perusal of the above portion clearly reveals that the petitioners are not challenging the report issued by the Government Analyst. As per the recitals of the Analysis Report, the drug sold by the petitioners is not of the standard quality. As per the allegations made in the complaint, the petitioners did not produce the record pertaining to manufacture particulars and also sale of the above batch No. Drug. Whether the drug seized is in conformity with the standard prescribed under IP-1996 or not is purely a question of fact. Various contentions raised by the learned counsel for the petitioners involve complexity of disputed questions of fact, which cannot be gone into while exercising the jurisdiction under Section 482 Cr.P.C.

a) In **Madhu Limaye Vs State of Maharashtra**^[1], the Hon'ble Supreme Court held as under:

"At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably barring a few exceptions:-

- (i) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (ii) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice.
- (iii) That it should not be exercised as against the express bar of law engrafted in any other provision of the code"

b) In **Padal Venkata Rama Reddy @ Ramu V Kovvuri Satyanarayana Reddy**^[2], the Hon'ble Supreme Court held as under:

"It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (Vide Kavita v State, 2000 Cr.L.J. 315 (Delhi) and B.S.Joshi v State of Haryana, 2003 (1) ALD (CrI).842 (SC) = (2003) 4 SCC 675 = AIR 2003 SC 1386= 2003 AIR SCW 1824). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy."

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7. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that it is not a fit case to quash the proceedings at pre-trial stage.

8. Accordingly, criminal petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

March 22, 2016.

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[\[1\]](#) AIR 1978 SC 47

[\[2\]](#) 2011 (2) ALD (CrI.) 948 (SC) = (2011) 12 SCC 437