

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

**CRIMINAL PETITION No.2785 of 2014**

**ORDER:**

The petitioners/A1 to A5, A8 & A9 are facing trial in C.C.No.68 of 2014 on the file of the Judicial Magistrate of First Class, Narasannapeta, Srikakulam District, registered for the offence under section 18(a)(i) r/w.17B(d) and punishable under Section 27(c) of the Drugs & Cosmetics Act, 1940 (hereinafter referred to as "the Act").

2. A1 is M/s.Indoco Remedies Limited, which was holding licence in manufacturing drugs, granted by the Food and Drug Administration, Maharashtra State on 18.03.1974 valid upto 31.12.2006. A2 is the Chairman & Managing Director of A1 Firm and A3 to A8 are its Directors. A9 is the GPA holder and competent person of A1 Firm holding licence for sale of drugs at Hyderabad, granted on 16.01.1991 valid upto 31.12.2007. While so, the Drug Inspector, Srikakulam, on 26.10.2002 inspected M/s.Sri Shiridi Sai Pharmaceuticals, Narasannapet, Srikakulam District and picked up sample of drug cloquin suspension (Chloroquin phosphate suspension), manufactured by A1 Firm for analysis, by paying its cost. On the same day, the Drug Inspector sent the sample for analysis to the Drugs Control Laboratory, Hyderabad. On 10.03.2003 the Drug Inspector received the analysis report in Form-13, vide report dated 25.02.2003, opining that the drug is not of standard quality, the sample does not meet the cloquin content as per label claim and the drug found was 13.9 mg instead of 50 mg for 5 ml. On 18.09.2003 the Drug Inspector deposited a sealed portion of the sample in the jurisdictional court. On the same day, he also addressed a letter to the accused firm about deposit of sample in the court and directed them to approach the Court if they want to avail the provisions of Section 25(4) of the Act. After receiving manufacturing and analytical records of the drug from

the accused firm, the Drug Inspector filed complaint against the accused, stating that the seized drug is substituted in part by another substance and it is deemed to be spurious and therefore, the accused contravened section 18(a)(i) r/w.17(B)(d) of the Act by manufacturing and selling a spurious drug which is punishable under Section 27(c) of the Act.

3. The case of the accused is that along with letter dated 18.09.2003, the Drug Inspector has not furnished the report of the analyst. The accused firm made several representations i.e. on 01.10.2003, 18.10.2003 and 19.01.2004 informing the Drug Inspector and the Drug Control Administration (AP) that they have not received the analyst report to put forth their defence and take further steps. It is contended by the accused that though the sample was collected on 26.09.2002, it was only tested in February, 2003. Ultimately, the Drug Inspector vide letter dated 23.01.2004, has furnished the copy of the Government Analyst's report, by which time, the sample drug was expired. The sample drug was manufactured in June, 2002 and its expiry date is November, 2003. As seen from the analyst report, the sample drug was delivered to the Laboratory in October, 2002 and the test was conducted only in February, 2003. It was not clear whether the sample was properly stored under proper storage conditions. The result of the test was informed to the accused firm vide letter dated 18.09.2003, after a period of 7 months from the date of test, without furnishing copy of the analyst report, as a result of which, the accused lost their opportunity to apply for a second test, as provided under Section 25 of the Act. However, after examining the report of the analyst, the accused filed a petition before the trial Court to send the sample of the drug to Central Drug Laboratory for opinion and the same was allowed. Vide letter dated 28.11.2005, the Central Drugs Laboratory informed the trial Court that the sample drug was tested and it confirmed to the Indian Pharmacopoeia standards with respect

to the content of chloroquine phosphate, but it expressed that it could not give opinion as the sample was sent after its expiry date.

4. The petitioners/accused filed CrI.P.No.11950/2011 to quash the proceedings in the above calendar case. This Court dismissed the said criminal petition, however, directed the trial court to dispense with the presence of the accused for each and every adjournment during course of trial.

5. In the meanwhile, the trial Court has commenced the trial in the above case and PWs 1 to 3 were examined. At that stage, the petitioners/accused filed CrI.M.P.No.477 of 2012 under Section 239 Cr.P.C seeking to their discharge. Vide orders dated 20.04.2012, the trial Court dismissed the said petition, while observing that though the analyst report was received in the year 2005, even prior to examination of accused under Section 239 Cr.P.C, but they did not raise any objection and after the entire trial proceedings was over and when the matter is coming for 313 Cr.P.C examination, the petition is filed, which is nothing but abuse of due process of law.

6. Against the dismissal order dated 20.04.2012, the petitioners/accused filed CrI.R.P.No.36/2012 before the Revisional Court, and the same was also dismissed vide orders dated 06.06.2013, confirming the order of the trial Court. The revisional court held that the petition filed under Section 239 Cr.P.C is not maintainable and the petitioners/accused have to file petition under Section 245(ii) of Cr.P.C. Aggrieved by the orders of the revisional Court, the present criminal petition is filed.

7. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor, representing the State.

8. The undisputed fact that emerges from the record is that the sample of the drug was taken from the shop on 26.09.2002. Its expiry date was November, 2003. It was analyzed by the Government Analyst in February, 2003 but the Drug Inspector has furnished the

Analyst Report on 23.01.2004, by which date, in November, 2003 itself, the drug got expired. Therefore, the petitioners were deprived of an opportunity of getting the sample analyzed by the Central Drug Laboratory within time. That apart, along with the notice, the complainant has not furnished the report of the Government Analyst to the petitioners. Only after persuasions, the same was furnished to them.

9. The contention of the respondent is that the present petition to quash all further proceedings is substantially belated since the trial has already completed and the case is at the stage of examining the petitioners/accused under Section 313 Cr.P.C. Learned Public Prosecutor submits that since the trial in the case has almost concluded it is not open to the petitioners to invoke the jurisdiction under Section 482 Cr.P.C., for quashing the prosecution. This fact is no doubt true but that does not disentitle the petitioners from filing the petition under Section 482 Cr.P.C., for quashing the proceedings if it is established that it results in miscarriage of justice if further trial is continued.

10. Learned Counsel appearing for the petitioners relied on a decision reported in ***Bharat Parikh v. CBI***<sup>[1]</sup>, contending that the High Court while invoking the powers under Section 482 Cr.P.C. for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claimed to be tried. The learned counsel further contends that it is only in the exceptional circumstances enumerated in *State of Haryana v. Bhajan Lal*<sup>[2]</sup> that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution produced sufficient material for charges to be framed.

11. Learned Counsel appearing for the petitioners further submits that the inordinate delay in launching the prosecution, which was long after the drug expired, has resulted in serious prejudice to the petitioners in not getting the sample analyzed within the life time of the drug. The following factual aspects which are borne out from the record show that there were serious lapses on the part of the complainant in launching the prosecution so as to give right to the accused to get the sample re-analyzed by the Central Drug Laboratory which is a statutory right provided to them so as to enable them to challenge the authenticity of the report submitted by the Public Analyst. Learned Counsel further submits that when the sample was lifted on 26.10.2002 and was sent to the Public Analyst on the same day, the Public Analyst analyzed the same and sent the report in March, 2003 i.e., more than four months after the sample was lifted. It is also submitted that there is no material on record to show that in this period the sample being a Chloroquine suspension was stored in the laboratory under proper storage condition and it appears that there is some calculation error while arriving at the percentage of chloroquine or the suspension was not properly shaken before it was taken up for testing.

12. As is noticed from the record, the sample was lifted on 26.10.2002 and its expiry date was November, 2003. The Public Analyst sent his report on 10.03.2003 to the complainant. The complainant deposited other sample in the Court on 18.09.2003 and informed to the accused about the same. But the complainant in his letter dated 18.09.2003 has not enclosed the report of the Public Analyst. Therefore, the petitioners/accused has addressed a letter immediately on 01.10.2003 in Ref.TDB/IND/GEN/65, dated 01.10.2003, acknowledging the receipt of the letter of the complainant but stated that they have not received the copy of the Government Analytical Report. Again on 18.10.2003 another letter was addressed

by the accused to the complainant reporting that the Government Analyst Report has not been received. The relevant portion of the said communication from the accused addressed to the complainant reads as under:--

“In fact we are entitled to receive one of the triplicate copy of the Government analyst report by virtue of provisions mentioned in Section 25 (2) of Drugs and Cosmetics Act. It is only on receipt of such triplicate copy of Government Analyst Report, we get a right to challenge the same. In absence of your supplying to us such triplicate copy of Government Analyst Report, we are loosing our valuable rights under Section 25 (3) of the said Act. Not only that but in such an event we are loosing our valuable rights of making an application to the Court to send the sample to the Director, CDL.

We have therefore to call upon you to furnish us the triplicate copy of Alleged Government Analyst Report and a sample portion, in order to enable us to exercise our rights under Section 25 (3) of the said Act.”

13. When this correspondence was being exchanged, on 23.07.2004 the Drug Inspector launched the prosecution by filing the complaint before the jurisdictional Magistrate. Apparently, the complaint is filed nearly eight months after the shelf life of the drug expired.

14. In spite of being repeatedly requested, since the report of the Government Analyst was not being furnished to the accused, a letter was addressed to the Director of the Drugs Control Administration on 19.01.2004. In the said letter dated 19.01.2004 it was informed to the Director of the Drugs Control Administration that the Drug Inspector has sent the copy of the Public Analyst Report to M/s.Eskay Pharma Distributors, which was a C&F Agent, for the manufacturer on 24.11.2003 vide letter No.65/TSR/DI/SKL/03, dated 23.11.2003. In the said letter dated 19.01.2004 it was informed that by the time they received the report of the Public Analyst, the drug expired and they

were deprived of an opportunity of getting the sample tested from the Central Drug Laboratory. Subsequently, however, the sample was sent to the Central Drug Laboratory, Calcutta for analysis on request by the accused and the same was analyzed by the Central Drug Laboratory, on being analyzed, it was found that the sample conforms to I.P. with respect to content of Chloroquine Phosphate.

15. The two reports of the Drug Analysts show varying results. When the Government Analyst found that the content of Chloroquine was 13.9 mg., as against 50 mg., the Central Drug Analyst found the same Chloroquine to be 47.5 mg., as against 50 mg. The Central Drug Laboratory has also opined that the sample conforms to I.P. with respect to content of Chloroquine Phosphate, whereas the Government Analyst opined that the sample does not meet the Chloroquine content as per labeled claim and hence was of not standard quality.

16. There is no dispute with regard to the proposition that if the peculiar facts and circumstances of the case so warrant, the accused can approach the High Court by filing a petition under Section 482 Cr.P.C., for quashing the proceedings and if it is satisfied that further continuation of the proceedings will amount to subjecting the accused to avoidable rigors of trial, the same can be quashed. Merely because the trial is at the advance stage, the right of the petitioners/accused to get the case quashed cannot be denied if the facts of the case so warrant.

17. In the instant case, there is no doubt that further continuing with the trial will be an abuse of the process of law, more particularly, in view of the fact that not only there are serious lapses on the part of the complainant in getting the sample analysed within reasonable time and serving the report of the Government Analyst to the petitioners, there are two conflicting reports, one given by the Government Analyst and other by the Central Drug Laboratory. The benefit thereof should

invariably go to the accused.

18. In view of the above, the order of the revisional Court is liable to be set aside and the petition filed by the petitioners under 239 Cr.P.C is liable to be allowed.

19. Accordingly, the Criminal Petition is allowed and the petitioners/A1 to A5, A8 & A9 are hereby discharged for the charges leveled against them.

Pending miscellaneous applications, if any, shall stand closed in consequence.

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**M.S.K.JAISWAL, J**

10<sup>th</sup> August, 2016  
Dsr/smr

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[\[1\]](#) (2008) 10 SCC 109

[\[2\]](#) 1992 SCC (Cri) 426