

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.539 OF 2016

Binay Kumar Pandey s/o Shambhu Nath Pandey and ors.

-vs-

The State of Maharashtra, At the instance of Drugs Inspector, Food and Drug Administration,
Buldana (M.S.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms Rajashri V. Kamble, Advocate for applicants.
Shri K. L. Dharmadhikari, APP for non-applicant/State.

CORAM : A.S.CHANDURKAR, J.

DATE : November 10, 2017

Heard.

By this application filed under Section 482 of the Code of Criminal Procedure, 1973, the proceedings in Summary Criminal Case No.746/2014 filed under provisions of Section 18 of the Drugs and Cosmetics Act, 1940 are under challenge. The principal ground of challenge is that the statutory right under Section 25(4) of the said Act could not be exercised by the applicants herein for want of necessary communication in that regard by the non-applicant.

It is submitted on behalf of the applicants that alongwith the communication dated 04/07/2014, the report of the Analyst was forwarded to the applicants in terms of Section 25(3) of the said Act. The applicants on 10/07/2014 disputed this report. When the sample was deposited in the Court, re-analysis was sought. The

trial Court on 23/07/2014 directed the applicants herein to deposit necessary charges for re-analysis. It is submitted for want of necessary communication to the applicants, this right could not be exercised. Though re-analysis was sought, it could not be obtained. It is thus submitted that in view of this legal infirmity, the complaint is liable to be quashed.

The aforesaid submissions are opposed by the learned Additional Public Prosecutor by relying upon the reply. It is submitted that after the trial Court passed an order on 23/07/2014, a communication was issued on 28/07/2014 by e-mail to the applicants to deposit testing charges. Despite that the charges had not been deposited. The applicants themselves were responsible for the same.

I find that there is serious dispute with regard to compliance of order dated 23/07/2014. While according to the applicants this order was not communicated to them, the non-applicant contends that by virtue of an e-mail message on 28/07/2014 this intimation was given. I find that this aspect can be decided only after recording of evidence. Same cannot be decided in a summary manner.

Hence by keeping the points raised in the present criminal application open and with liberty to the applicants to raise the same before the trial Court, the

present application is disposed of.

JUDGE

Asmita