

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.O.P.No.4461 of 2013

1. M/s.Cadila Pharmaceuticals Limited,
1389, Dholka - 387 810,
Rep. by its Managing Director,
Rajiv Modi.
2. Rajiv Modi,
Managing Director,
M/s.Cadila Pharmaceuticals Limited,
1389, Dholka-387 810. Petitioners

Vs

A. Sashi, Drug Inspector,
Arumbakkam Range I/C,
Office of the Asst. Director of
Drugs Control Zone II,
Chennai - 600 006. Respondent

Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.1713 of 2011 pending on the file of the X Metropolitan Magistrate, Egmore, Chennai-600 008 and quash the same.

For Petitioners : Mr.A.Ramesh, Senior Counsel
for Mr.G.Balasubramanian

For Respondent : Mr.L.B.Ramesh Babu,
Government Advocate (Crl. Side)

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O R D E R

This petition is filed seeking quash of Proceedings in C.C.No.1713 of 2011 on the file of X Metropolitan Magistrate, Egmore, Chennai.

2.Heard, learned counsel for petitioners and learned Government Advocate(Crl. Side) for respondent.

3.Complaint was filed alleging offences under Section 18(a) (i) of Drugs and Cosmetics Act 1940, punishable under Section 27 (d) and Section 18B of the Act 1940, punishable under Section 28-A.

4.Pursuant to seizure of samples of Cough Syrup manufactured by first petitioner/A1, the test/ analysis report informed that the Cough Syrup was not of standard quality and that the same did not conform to the claim in the label of the product. The discrepancies noted in the complaint is stated hereunder:

"The Analytical report in Form 13 No.00978-D/2009-10 dated 29.11.2010 was received by Mr.Vijayaraghavan, the then Drugs Inspector, Arumbakkam Range, on 06.12.2010. The Government Analyst (Drugs), Chennai - 600 006, has reported that the sample is of Not of Standard Quality for the reason that it does not conform to general description and to label claim with respect to the content of the Ambroxol hydrochloride which is found to be 49.03%."

The allegation is based on the analysis report dated 28.07.2009 informing the following:

Assay:

Estimation of	Each 5ml of the sample is found to	Each 5ml purports to contain
Boratadine	5.25 mg (105%)	5 mg
Ambroxol hydrochloride	14.71 mg (49.03%)	30 mg
Guaiphenesin	47.85 mg (95.7%)	50 mg
(Limit:90% to 110% of label claim)		

The analysis report dated 28.07.2009 itself reveals the manufacturing date of the Syrup to be June 2009 and the expiry date to be May 2011.

5. The complaint in this case has been preferred only on 06.05.2011. Section 25 of the Drugs and Cosmetics Act, 1940, reads as follows:

25.Reports of Government Analysts. --(1) The Government Analyst to whom a sample of any drug (or Cosmetic) has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from

whom the sample was taken (and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18-A), and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken (or the person whose name, address and other particulars have been disclosed under section 18-A) has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug (or cosmetic) produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

6. It may be seen that sub-section (4) provides causing of sample of the drug to be sent for analysis to the Central Drugs Laboratory by the Court acting on its own motion or at the instance of the complainant or accused. Such sub-section also informs that the result of such an analysis and the report thereon shall be conclusive of the evidence of the facts stated therein. Several are the decisions which inform that denial of right of disputing the claim of the complainant, through calling for an additional analysis report at the hands of the Director of Central Drugs Laboratory, would nullify the prosecution. In the instant case, shelf life of the drug was to expire in the

very month on which the complaint was preferred and it is nobody's case that the further report from the Central Drugs Laboratory has been called for or obtained within the shelf life. Petitioner is bound to succeed. The Criminal Original Petition stands allowed and proceedings in C.C.No.1713 of 2011 shall stand quashed. M.P is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dn/rsi

To

1.The X Metropolitan Magistrate,
Egmore, Chennai 08.

2.A. Sashi, Drug Inspector,
Arumbakkam Range I/C,
Office of the Asst. Director of
Drugs Control Zone II,
Chennai - 600 006.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Poovayya & Co., Advocate, S.R.No.45640

Cr1.O.P.No.4461 of 2013

VG II(CO)
CA(09/08/2017)

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