

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.722 OF 2017

ORDER:

The petitioners, who are arraigned as accused Nos.1 and 2 in Calendar Case No.917 of 2016 on the file of the II Additional Judicial Magistrate of First Class, Bheemavaram, filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in the Calendar Case.

2. They alleged to have contravened the provisions of Section 3 of the Essential Commodities Act, 1955 (for short 'the Act, 1955') read with paras 14 (1) and 24 (3) of the Drugs (Prices Control) Order, 2013 (for short 'Order 2013'), and thereby committed the offence punishable under Section 7 (1) (a) (ii) of the Act, 1955.

3. Heard Sri A. Sudhakar Rao, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The Drugs Inspector of Bheemavaram, who is respondent No.2 herein, when conducted inspection of M/s. Sri Vijayalakshmi Medicals, situated at Door No.1-7-4/2, near Adda Vanthana, Suryanarayanapuram, J.P. Road, Bheemavaram on 16.09.2015, he found 'Standig Tablets' stocked for sale along with other drugs manufactured by the firm of accused No.1 i.e., M/s. Sai Healthcare,

accused No.1 in the Calendar Case. He has given the details of the drug thus:

“

Name of the drug with composition	B.No.	Mfg. Date	Maximum Retails Price (including all taxes)
Standig Each Tablet contains Digoxin IP 0.25 mg.	SH15AT007	Jan 2015	Rs.1.80/Tab

”

i) According to him, the ceiling price fixed by the National Pharmaceutical Pricing Authority (NPPA), Government of India, vide S.O. 1156E, dated 28.04.2014, is Rs.1.34/Tab for the above strength formulation specifying Maximum Retail Price at Rs.1.34/Tab + local taxes suffered if any. But, the price was shown as Rs.1.80/Tab, which amounts to 28% (Rs.0.39 per tablet) of excess price approximately.

ii) That has been the allegation against petitioner Nos.1 and 2. He seized the drug and purchase invoice for the said drug from Mr. T.D. Raja Shekhar, Pharmacist of M/s. Sri Vijayalakshmi Medicals in the presence of two mediators under the cover of *panchanama* under Para 30 of Order, 2013, and a copy of *panchanama* was given to Mr. T.D. Raja Shekar under acknowledgment and seizure was informed to the learned Magistrate on 05.10.2015, and based on purchase invoice, he inspected the Supplier along with Drugs Inspector, Vijayawada-II, i.e., M/s. Stanmed Pharmaceuticals, Jagadambavari Street, Suryaraopet, Vijayawada, and obtained certified copies of link purchase invoice pertaining to the seized drug, and based on the link purchase bill

No.14-15/088, dated 23.01.2015, it was confirmed that the subject overpriced drug was supplied by petitioner No.1.

iii) On 11.10.2015, he addressed a letter to accused No.1 - firm with a request to confirm the sale of subject drug, Form - V price list as per para 24 (3) of the Order, 2013, and to clarify the discrepancy in the MRP of the seized drug compared to the Ceiling Price fixed by the NPPA, and to submit the certified copies of the documents.

iv) On 04.11.2015, he received reply from accused No.1 signed by Sri Gaurav Gupta said to be the authorized signatory and Plant Head stating that they have not obtained any price approval from NPPA, and as per the documents, accused No.2 is the sole proprietor of accused No.1.

v) He made an application under Right to Information Act, 2005, on 11.10.2015 to the Public Information Officer - cum - Drugs Inspector, Baddi, and as per the information, petitioner No.2 is the sole proprietor of petitioner No.1.

vi) According to the Drug Inspector, 'Standig Tablet' is a formulation as per Para (2) (i) of the Order, 2013, and is a scheduled formulation as per Para 2 (zc) read with sr.no.12.4 of the Schedule I appended to the Order, 2013 and is an essential commodity as per Section 2-A (1) r/w sr.no.01 of the schedule appended to the Act, 1955, and thereby lodged the complaint with the Magistrate.

5. The learned counsel for the petitioners would submit that on receipt of show-cause notice, dated 16.09.2015, petitioner No.1 firm duly sent its reply to respondent No.2 mentioning therein that they have recalled the pharmaceuticals and further directed their marketing company i.e., Stanmed Pharmaceuticals, Vijayawada to stop the sale and recall of the product assuring that the mistake will not be repeated and it was clearly mentioned that no price approval was obtained from the NPPA of the subject product, and apart from that the petitioners sent all the required information as sought by respondent No.2.

i) The learned counsel also would submit that respondent No.2 did not enclose with the complaint the alleged ceiling price fixed by NPPA vide NPPA Government of India vide SO1156E, dated 28.04.2014, and in the absence of filing the said crucial document along with the complaint, the very complaint is nothing but abuse of process of law.

ii) The learned counsel also would submit that the petitioners have got approval to manufacture the drug in question i.e., Digoxin tablet from the concerned Family Welfare Department, Himachal Pradesh.

iii) The learned counsel further would submit that respondent No.2 has not placed any cogent material along with the complaint to warrant the prosecution of petitioners for the alleged violations as

mentioned in the complaint and, therefore, sought to quash the proceedings in the Calendar Case.

6. The learned Additional Public Prosecutor not only referred to the complaint, but also annexures thereto, which are letter addressed by respondent No.2 to M/s. Sai Healthcare, Village Khera-Nihla, Tehsil: Nalagarh, District Solan, Himachala Pradesh, requesting to submit the documents mentioned therein; another letter to M/s. Sai Healthcare, dated 11.03.2015, which is a show-cause notice, seeking explanation; and yet another letter, dated 24.10.2015 addressed by the Authorized Signatory, Sri Gaurav Gupta of petitioner No.1-firm and addressing the same to M/s. Stanmed Pharmaceuticals, Suryaraopet, Vijayawada to recall the product ‘Standig Tablet’, B.No.SH15AT007, Mfg.Dt.Jan.2015 from the market and send them back immediately.

ii) According to the learned Additional Public Prosecutor, there is no merit to grant the relief sought for by the petitioners.

7. Perused the material on record along with the complaint.

8. The letter, dated 16.09.2015, addressed by respondent No.2 to petitioner No.1 contains relevant particulars, which are thus:

“

S. No.	Drug Name	Mfg.by	Batch No: Mfg Date	M.R.P. per unit	Ceiling price	S.O.No.	MRP Allowed (incl.5% LT)	Over priced by %
1.	Standig (Digoxin Tablets IP 0.25mg)	M/s Sai Helathcare, Village Khera-Nihla, Tehsil: Nalagarh, Dist: Solan, Himachal Pradesh-174101	SH15AT007 , Jan.2015	Rs.1.80 /Tab	Rs.1.34/ Tab	1156E dated: 28.04.2014	RS.1.41/Tab	28%

”

9. Thus, it is clear that the ceiling price was Rs.1.34 per tablet, whereas MRP per tablet printed is Rs.1.80 per tablet. This is not denied by petitioners as could be seen from the letter addressed by them to respondent No.2, dated 24.10.2015. They, in fact, in unmistakable terms would mention that no price of approval was obtained from the NPPA, New Delhi of the said product to sell it at 1.80 per tablet and, in fact, the letter, dated 26.09.2015 to Stanmed Pharmaceuticals, Suryaraopet, Vijayawada, who is the supplier, recalling the product, would clearly prove that there has been infraction of the Section 3 of the Act, 1955 read with paras 14 (1) and 24 (3) of the Order, 2013. No doubt, the product was sought to be collected back by the petitioner and they pleaded to excuse them treating it as a mistake, but that would not help them in waiving the aforesaid contravention.

10. The learned Additional Public Prosecutor also filed copy of the Order, 2013. The said order was issued in exercise of the powers conferred by paragraph 4, 6, 10, 11, 14 and 16 of the Order, 2013, dated 30.05.2013, by the Government of India in the Ministry of Chemicals and Fertilizers in supersession of the Order of the Government of India in the Ministry of Chemicals and Fertilizers (NPPA) S.O. It shows at serial No.136, the product as "Digoxin Tablets". The strength of the tablet being "0.25mg.", Unit being "1 Tablet" the ceiling price as "1.34" S.O. number as "1641(E), and the

date as “14.6.2013”. Thus, when the subject drug is finding place at serial No.136 in the Order 2013, with the ceiling price “1.34” with local taxes extra if any, the price fixed by the petitioners at 1.80-TAB is nothing but contravention of the Order, 2013 as referred to in the order and, therefore, it cannot be said that there is no allegation to make out a case for the offence alleged against the petitioner. Thus, there is *prima facie* material available on record to proceed with the trial, and it is not a case for quashment.

The Criminal Petition is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

July 24, 2017.
Mgr

A. SHANKAR NARAYANA, J

