

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2773 of 2010

ORDER :

The petitioners are A1 and A2. A2 is the Managing Director of A1-entity. The Drug Inspector, Tenali, Guntur District represented by the Public Prosecutor maintained a private complaint that was taken cognizance by the learned I Additional Judicial First Class Magistrate, Tenali, as C.C.No.44 of 2009 for the offences punishable under Section 32, 18(a)(i) r/ w Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 and the Rules made there under (for short 'the Act'). Impugning the said cognizance order, this quash petition is filed, which is all through pending for the past seven years.

2. The main impugment by the learned counsel for the petitioners/ accused is that the very filing of the complaint and taking of cognizance is unsustainable, more particularly from the report of the Central Drug Laboratory Director dated 29.09.2008 clearly speaks that the sample conforms to claim in respect of the test and it is of standard quality as defined in Drugs Act, 1940 and rules made there under. It is there from sought for quashing the proceedings in the said C.C.

3. It is the submission contra by the learned Public Prosecutor representing the Drug Inspector that earlier to it, not only

Central Laboratory, but also, the State Laboratory given the reports showing that the drug in question is not of standard quality and it is an adulterated one and thereby, sought for dismissal of the criminal petition and it is the matter to be adjudicated during trial.

4. A perusal of the material on record, which is part of the quash petition shows the Public Analyst of the State Government in his report No.1574 dated 24.10.2006 given opinion stating that the sample does not comply the uniformity of weight disintegration as per I.R. specification and Assay for Mefenamic Acid as per Clar. Method. It is pursuant to it, the second sample sent at request of the accused to the Central Laboratory and the Central Drug Laboratory given its opinion dated 18.07.2008 saying that it is not of standard quality as defined in the Act for the reasons give below and the reasons for declaring the sample is not of standard quality mentioning in the remarks column that the sample does not conform to claim with respect to Assay (Content of Paracetamol) and also does not conform to Schedule V of Drugs & Cosmetics Acts & Rule with respect to "Uniformity of Weight of Tabs" and "Disintegration".

5. So far as the second laboratory report referred supra concerned, the uniformity of weight of tabs and disintegration complies and identification gives positive test for paracetamol

and mefenamic acid, thereby, sample conforms to comply in respect of above test. Once there is a Central Laboratory report and State Laboratory report clearly speaks not as per the standard and there is a subsequent lab report is as per the standard, which report has to be taken into consideration with reference to the above also requires adjudication.

6. Having regard to the above, it is not a clear case for quashing the proceedings, but, relegate the parties to face trial.

7. Accordingly, without going into the merits of the case, which pre-judge the trial of the case, this Criminal petition is disposed of.

8. Miscellaneous petitions, pending if any, shall stand closed.

Date:31-08-2017  
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Dr. B. SIVA SANKARA RAO, J

