THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2419 OF 2016

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.282 of 2013 on the file of I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District for the offence under Section 18(a)(i) and punishable under Section 27(d) of The Drugs and Cosmetics Act, 1940 (for short 'Act').

The first petitioner is the Manufacturer of the drug in question-DISCER B.No.41825 with manufacturing date in July 2005 and expiry date in June, 2008, which was allegedly not of standard quality. The second petitioner is the Director of the said company, who is responsible for the day-to-day activities of the company.

On 14.09.2007, Sri K. Raja Bhanu, Assistant Director, DCA, Hyderabad had picked up eight types of drugs for analysis from M/s Nutide Pharmaceuticals. One of the drug was 4X6X10 tablets of DISCER B.No.41825 Mfg Dt: July 2005 Exp Dt: June, 2008, manufactured by the first petitioner company. Thereupon, notice in Form-17 and Form-17A were issued to the Proprietor, M/s Nutide Pharmaceuticals by duly following the procedure laid down under Section 23 of the Act. The Assistant Director sent 1x6x10 tablets of DISCER B.No.41825 Mfg Dt: July 2005 Exp Dt: June, 2008, manufactured by the first petitioner company to the Government Analyst Drugs Control Administration Hyderabad by Registered Parcel duly following the procedure as laid down under Section 23(4) of the Act and Rule 57 of Drugs and Cosmetics Rules, 1945.

On 22.01.2008, Sri A. Sambaiah Naik, Drug Inspector, received Analytical Report of the subject drug in Form-13 along with covering letter vide 0111/DCL/2008 dated 17.01.2008 from the Government Analyst Drug Control Administration, Hyderabad, declaring the drug as '***Not of Standard Quality***'.

On 13.02.2008, Sri A. Sambaiah Naik addressed a letter under Section 18(a)(i) r/w Sections 18A & 18B, 22(i)(cca) & 25(2) of the Act to M/s Nutide Pharmaceuticals, enclosing a copy of Analytical Report and sent by registered post under acknowledgment and the acknowledgment was received on 19.02.2008. The Proprietor of M/s Nutide Pharmaceuticals gave reply on 19.02.2008 submitting attested copy of purchase bill of the subject drug bearing Invoice No.040 dated 27.07.2006 issued by the first petitioner company and also submitted attested copies of the distribution particulars of the subject drug and attested drug license copies of M/s Nutide Pharmaceuticals. Further, Proprietor of M/s Nutide Pharmaceuticals gave another reply on 19.02.2008 submitting the copies of purchase and distribution particulars of the subject drug and also submitted drug license copies of M/s Nutide Pharmaceuticals.

On 23.02.2008 Sri A. Sambaiah Naik addressed a letter under Sections 22(i)(cca), 23(4)(iii), 18(B), 18(a)(i), 25(3) and Rules 74(d), 78(c)(i)J of the Act to the first petitioner company while enclosing certificate of test of Analysis in Form-13 vide 0111/DCL/2008 dated 17.01.2008 and sent by registered post under acknowledgment and the acknowledgment was received on 05.03.2008.

The first petitioner company gave reply on 05.03.2008 and

requested to send the copy of Analytical Report along with one portion of the sealed sample of the drug immediately.

The Proprietor of M/s Nutide Pharmaceuticals gave reply on 19.02.2008 stating that the purchase and distribution particulars of the subject drug and intimation to the manufacturer about '***Not of Standard Quality'*** of the subject drug manufactured by them.

Sri A. Sambaiah Naik addressed a letter dated 14.03.2008 to the first petitioner company while enclosing copy of Analytical report and one sealed sample portion of the subject drug and sent by registered post under acknowledgment due and the acknowledgment was received on 25.03.2008.

On 26.03.2008, Sri A. Sambaiah Naik informed the I Additional Chief Metropolitan Magistrate Court, Vijayawada, about the subject drug which was declared as '***Not of Standard Quality'*** drug by the Government Analyst and deposited second sealed sample portion of the drug for safe custody.

The first petitioner company gave a reply on 19.03.2008 stating that they received the sealed sample portion of the drug and Analytical Report of Government Analyst, DCA, Hyderabad was not received. Further, Sri A. Sambaiah Naik addressed a letter on 27.03.2008 to the petitioner company while enclosing another copy of certificate of test of Analysis in Form-13 vide 0111/DCL/2008 dated 17.01.2008 for information and was sent by registered post under Acknowledgment and the said acknowledgment was received on 01.04.2008.

The petitioner company gave reply on 05.04.2008 while

enclosing the copy of Certificate of Analysis given by Shagun Test Laboratories, Gurgaon & Copy of Certificate of Analysis given by the first petitioner company, challenged the State Government Analyst report and requested to retesting the Central Drugs Laboratory, Kolkata. Sri A. Sambaiah Naik addressed a letter to the first petitioner company on 26.05.2008 informing that the second sealed sample portion of the subject drug was deposited in the I Additional Chief Metropolitan Magistrate Court, Vijayawada and also requested to furnish the particulars like name and address of the person responsible for day to day activities of the company as per Section 34 of the Act along with the list of Directors and the same was sent by registered post with acknowledgment due and the said acknowledgment was received on 05.06.2008.

On 02.06.2008, the first petitioner company requested the I Additional Chief Metropolitan Magistrate Court, Vijayawada for retesting of subject drug in Central Drugs Laboratory, Kolkata.

On 13.06.2008, Sri A. Sambaiah Naik, Drugs Inspector filed petition under Section 25(4) of the Act in the I Additional Chief Metropolitan Magistrate Court, Vijayawada, vide C.F.No.5491 dated 13.06.2008.

On 07.12.2009 Sri S. Vijaya Kumar, Assistant Director, Drugs Control Administration addressed a letter to Drug Controller, Haryana and requested to provide necessary information in connection with the subject case. On 21.12.2009 Sri S. Vijaya Kumar, addressed a letter to the Director General, Drugs Control Administration, Hyderabad and submitted the report of investigation at Haryana. Further, Sri S. Vijaya Kumar addressed a

letter on 02.07.2010 to Drug Controller, Haryana, and requested to provide the particulars on the subject matter through the Drugs Inspector, Machilipatnam, as he has proceeded to Haryana in some other case.

The first petitioner gave reply on 26.07.2010 submitting the constitution particulars of the company and affidavit of the person responsible for the day-to-day activities of the company and copies were enclosed.

Kumari G. Jeevani addressed a letter dated 01.06.2012 to the first petitioner company requesting them to inform the name and address of the Director responsible for the day-to-day activities of the company. The first petitioner company replied on 21.06.2012 with a request to send the copy of Central Drugs Laboratory test report of retesting. Thus, the first petitioner company and the second petitioner manufactured and sold DISCER B.No.41825 Mfg Dt: July 2005 Exp Dt: June, 2008, which was declared as '***Not of Standard Quality***' by the Government Analyst, DCA, Hyderabad, hence violated Section 18 (a)(i) of the Act, punishable under Section 27(d) of the said Act.

The Court took cognizance of the offence and registered the same as calendar case 282 of 2013. Challenging the proceedings in C.C.No.282 of 2013, the present criminal petition under Section 482 Cr.P.C is filed mainly on three grounds.

The first and foremost ground raised by the petitioners is that, non-compliance of Sections 22(i)(cca), 23(4)(iii), 18(B), 18(a)(i), 25(3) and Rules 74(d), 78(c)(i)J. The petitioners also contended that the respondent did not comply Rule 46 of the Rules framed under the

Act and that the petitioners had no reasonable opportunity to make a request to send the second sample to the Central Laboratory as per the procedure prescribed under the Act and thereby violated the provisions of the Act. Consequently, the prosecution cannot be maintained. The petitioners are innocent of any offences but they were falsely implicated without following due procedure for collection of samples till filing of the complaint under the provisions of the Act. When the procedure followed by the respondent is not in strict adherence to the procedure, the complaint cannot be maintained.

The second ground raised by the petitioner is that the drug was analyzed after five months of its seizure and when the original report of the Central Laboratory Analyst in Form No.2 is neither in the Court nor supplied neither to the petitioner nor with the complainant. It would go to show that the second sample was not at all sent to the Central Laboratory within the period of shelf life i.e. expiry period. The shelf life of the drug expired is June, 2008 and the petitioners are not in a position to defend the case due to undue delay. On this ground also, the complaint is liable to be dismissed at the threshold.

The third ground is that the report of the Government Analyst is bereft of details regarding compliance of Rule 46 of the Rules. Form No.13, the result of the test report does not disclose the full particulars of the test or analysis applied, nature of the test conducted, except the result. Thus, non-compliance of Rule 46 vitiates the entire proceedings.

Another ground is that the person who collected drug for test

or analysis must be a Drug Inspector who is appointed by the Central Government or State Government by Gazette Notification, as per Section 21 of the Act. But, Sri K. Raja Bhanu, Assistant Director, DCA, Hyderabad was not appointed as per Section 21 of the Act and that he was not appointed for the specific area where the sample is lifted, publishing the same in official gazette in terms of Section 21 of the Act, thereby, Sri K. Raja Bhanu, Assistant Director, DCA, Hyderabad is incompetent, thereby, the proceedings are vitiated. Similarly, Sri A. Sambaiah Naik, Drugs Inspector, Narsampet, Sri S. Vijaya Kumar, Assistant Director, Drugs Control Administration and Kum. G. Jeevani, Drugs Inspector, Zone-2, Vijayawada, Krishna District, were not appointed for the particular area notified in the gazette i.e Zone-2 of Vijayawada, in such case, the proceedings are liable to be quashed.

During hearing, learned senior counsel Smt. Sesha Rajyam appearing on behalf of Smt. Radhika Gadde, learned counsel for the petitioners contended that non-compliance of Sections 22(i)(cca), 23(4)(iii), 18(B), 18(a)(), 25(3) and Rules 74(d), 78(c)(i)J, drawn attention to the law declared by this Court in **Johnson & Johnson Ltd., Himachal Pradesh v. State of Andhra Pradesh**[1] and Apex Court in **Medicamen Biotech Ltd and anr. V. Rubina Bose, Drug Inspector**[2] in support of her contentions regarding non-compliance, besides raising several contentions with regard to the power of the Court to quash the proceedings under Section 482 of Cr.P.C and pointed out the competency of Sri K. Raja Bhanu, Assistant Director, DCA, Hyderabad, Sri A. Sambaiah Naik, Drugs Inspector, Narasampet, Warangal District, Sri S.Vijaya Kumar, Assistant

[1] 2015 (2) ALD (Crl.) 457
[2] (2008) 7 SCC 196

Director, Drugs Control Admn and Kum. G. Jeevani, Drugs Inspector, Zone-2, Vijayawada. Learned counsel contends that when the above persons are incompetent, the entire proceedings are vitiated and the prosecution cannot be continued against the petitioners.

Learned counsel for the petitioners further contended that no sufficient opportunity was afforded to the petitioners to send the second sample to Central Drug Laboratory, Kolkata for analysis when the analysis report of the State is disputed by the petitioners and sending sample after expiry date i.e. shelf life would not serve any purpose and therefore, the proceedings are vitiated by irregularities and even if trial is allowed to be conducted, it would not serve any purpose and prayed to quash the proceedings.

Per contra, learned Public Prosecutor for the State of Andhra Pradesh contended that sufficient opportunity was afforded to the petitioner to make a request to send the sample to the Central Laboratory while making certain complaints regarding non-receipt of the second sample and copy of the Analyst Report of the State, though enclosed to the letter. However, the request was made by the respondent after expiry date. Making such requests, on lame excuses of non-receipt of report, etc, again and again would clearly show that the petitioners conveniently avoided to make a request to test before expiry date made a request for sending a sample to Central Laboratory. The conduct of the petitioners is sufficient to conclude that the petitioners did not avail the opportunity within the time and thereby no prejudice would be caused and consequently, the petitioners are not entitled and the complaint cannot be quashed at the threshold. Learned Public Prosecutor

further contended that Sri K. Raja Bhanu, Sri A.Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani were appointed to work in entire area of Andhra Pradesh and necessary Gazette Notifications were also published and produced copies of those Gazette Notifications to prove that they are competent to lift the sample and file proceedings. Consequently, the proceedings cannot be quashed on the ground of incompetency of Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani. Finally, the learned Public Prosecutor for the State of Andhra Pradesh drawn attention of this Court to the Analyst Report regarding nature of test conducted by the laboratory. The report disclosed that the test conducted by the State Laboratory is "Tyrosine Method" and in Column No.6 of the same, the Analyst opined that the seals were intact and identical with specimen seal. Therefore, Rule 46 of the Rules was complied and consequently, it is not a ground to quash the proceedings and prayed to dismiss the petition.

Considering rival contentions and perusing the material available on record, the points that arose for consideration are as follows:

1. ***Whether Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar and Kum. G. Jeevani are competent to lift the samples and investigate into the offences and file complaint in terms of Sections 21, 22 of the Drugs and Cosmetics Act?***
2. ***Whether the Analyst Report of the State is in compliance of Rule 46 of the Rules?***
3. ***Whether sufficient opportunity was afforded to the***

petitioners to make a request to send the second sample to the Central Laboratory, in compliance of Sections 25(3) & 25 (4) of the Act. If not, whether the proceedings are vitiated and liable to be quashed.?

POINT No.1

The first and foremost contention of the learned counsel for the petitioners is that Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani were incompetent to lift the samples, investigate, file complaint and also their appointment to the particular area i.e. Zone-II of Vijayawada was not notified as required under Section 21(1) of the Act and in the absence of such gazette notification, they are incompetent and consequently, lifting up the samples and concluding the consequential proceedings are vitiated. On this ground alone, the proceedings are liable to be quashed.

Whereas, the learned Public Prosecutor for the State of Andhra Pradesh would contend that all the five officers were appointed for the entire State and they can be posted anywhere in the State and thereby they are competent to lift samples, conduct investigation and file complaint in terms of Section 21 & 22 of the Act and drawn attention of this Court to G.Os issued by the Government appointing the five officers for the entire area of State.

In view of rival conventions, it is apposite to extract Sections 21(1) & 22(1) for better appreciation, which reads as follows:

> "Section 21(1):
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> The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be

> Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be."
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> Section 22(1):
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> Subject to the provisions of Section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed....."

The significance of the words 'for such area as may be assigned to them' used in Section 21(1) of the Act and within the local limits of the area for which he is appointed and the use in Section 22(1) are important for deciding the real controversy between the parties. In Section 3 of the Act, the word 'local area' or 'area' was not defined. Similarly, in the Rules, those two words are not defined, but G.O.Ms.No.67 dated 09.03..1994 passed by the Principal Secretary to Government would disclose that Sri K. Raja Bhanu who lifted the sample was appointed as Drug Inspector by the Government of Andhra Pradesh by exercising power under Section 21(1) of the Act. Similarly, Sri A. Sambaiah Naik who took up investigation was appointed as Drug Inspector "***in the State of Andhra Pradesh***", as per G.O.Ms.No.670, Health, Medical and Family Welfare (L.2) 12.12.1988, by the Secretary to the Government by exercising power conferred by Section 21(1) of the Act. Similarly, Sri S. Vijaya Kumar was appointed as Drug Inspector "***in the State of Andhra Pradesh***" by the Secretary to Government by exercising power under Section 21(1) of the Act and finally G. Jeevani was appointed as Drug Inspector along with other 51 officers as Drug Inspector specifying the local area as "***entire State of Andhra Pradesh***" by exercising power under Section 21(1) of the Act by G.O.Ms.No.335 Health, Medical & Family Welfare (L2) dated 24.11.2011. The said G. Jeevani is in Serial No.37. All the Drug

Inspectors by names Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani were appointed by different G.O.s to work in the entire State of Andhra Pradesh and curiously for G. Jeevani, the local area is notified as entire State of Andhra Pradesh. Though local area is not defined under the Act and Rules therein, when they were appointed to work in the entire State, the State in which they are appointed is deemed to be their local area.

Learned counsel Sri Sesha Rajyam demonstrates that there is a difference in the language used under Section 21(1) and 22(1) and pointed out the words 'for such area as may be assigned to them and within the local limits of the area for which he is appointed', but it makes lot of difference, since the assignment of area is after appointment. But, there is anomaly between Section 21(1) & Section 22(1) because of the language used by the legislature. As seen from the G.Os referred above, they were appointed to work in the State of Andhra Pradesh and whereas, G. Jeevani was appointed to work in the local area of State of Andhra Pradesh. But in the appointment of other officers, no local area was specified in the G.O., except in the State of Andhra Pradesh.

When Drug Inspector was appointed by exercising power under Section 21(1) of the Act, the question of assigning of area on the date of appointment would not arise. The assignment of any area would arise only subsequent to appointment and posting of the officer to work in particular area. But whereas, Section 22(1) prescribes powers of the Inspectors which permits the Drug Inspectors who were appointed by the State Government or the Central Government may exercise power under Section 23(1) within the State, subject to their transfer from one place to other place or

so. The legislative lacunae regarding local area appointment of the Drug Inspectors on the date of appointment can be said to be for the entire state, but not the area where they are transferred from time to time due to administrative contingencies and therefore, failure to notify the area where Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani were working and lifted samples, conducted investigation and filed complaint is not a pre-condition to exercise such power under Section 22 of the Act, such narrow interpretation would lead to legislative absurdity.

Learned counsel for the petitioners in support of her contention urged that Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani are competent, as their appointment was notified in the Official Gazette for the area where they are discharging duties and drawn attention of this Court to the judgments of this Court in **Johnson & Johnson Ltd**, where a single Judge of this Court adverting to the notifications issued under Section 21 & 22 of the Act, held that provisions of the Act requires the State Government to issue notification appointing Drug Inspectors and prescribing local limits of area for which the Drug Inspector is appointed. The G.O filed along with the complaint referred the name of the Drug Inspector who filed complaint but not of the understanding who lifted the sample from the vendor and therefore, notifying the appointment of the Drug Inspector for the area to which he was appointed is mandatory and non-compliance of it would vitiate the entire proceedings. No doubt, the law declared by the Single Judge of this Court is in support of the contention raised by the learned counsel for the petitioners, but such strict narrow interpretation cannot be given to the procedural aspects and

it must be harmoniously interpreted. As on the date of appointment, exercising power under Section 21(1) of the Act, no area will be assigned in ordinary course of events, except appointing them for the entire State. So, the notification under Section 21(1) of the Act, must be only to appoint them to work in the State of Andhra Pradesh, but not for the particular area. In all the notifications referred above, they were appointed to work in the State of Andhra Pradesh. Therefore, basing on such narrow interpretation of Sections 21 & 22, the proceedings cannot be vitiated. Even otherwise, Section 21 deals with appointment of Inspector, as per which, the State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be. The question of appointment of a particular zone and again after their appointment would not arise in normal course of events. Therefore, I am unable to agree with the view taken by the learned single Judge of this Court with great respect. On overall consideration of the language used in Sections 21(1) & 22(1), it is clear that the Government is required to notify the appointment in person having prescribed qualifications to be a Drug inspector for the area to be assigned to them. Thus, Sri K. Raja Bhanu, Sri A. Sambaiah Naik, Sri S.Vijaya Kumar, and Kum. G. Jeevani were appointed for the State of Andhra Pradesh, but not for a specific local area. Hence, on the ground of failure to issue notification in the official gazette after the appointment of the Drug Inspector on their postings or transfer to discharge their duties as Drug Inspectors from time to time, notification in the official gazet5te

need not be issued. Hence, it is not a ground to quash the proceedings. Accordingly, the point is held against the petitioners and in favour of the respondent.

POINT NO.2:

The second ground raised by the learned counsel for the petitioners is that the report is not in compliance of Rule 46 of the Rules framed under the Act. Rule 46 prescribes the procedure to be followed by the analyst and it is as follows:

> "**Rule 46: Procedure on receipt of sample**: On receipt of a package from an Inspector containing a sample for test or analysis, the Government Analyst shall compare the seals on the packet [or on portion of sample or container] with the specimen impression received separately and shall not the condition of the seals on the [packet or on portion of sample or container]. After the test or analysis has been completed, he shall forthwith supply to the Inspector a report in triplicate in Form 13 of the result of the test or analysis, together with full protocols of the tests or analysis applied.

The first requirement is on receipt of package from an Inspector containing a sample for test or analysis, the Government Analyst shall compare the seals on the packet or on portion of sample or container with the specimen impression received separately and shall note the condition of the seals on the packet or on portion of sample or container. After the test or analysis has been completed, he shall forthwith supply to the Inspector a report in triplicate in Form 13 of the result of the test or analysis, together with full protocols of the tests or analysis applied. In the present facts of the case, the analyst report in Form 13 issued under Rule 46 discloses compliance of requirements under Rule 46. Column No.6 of Form 13 of Analyst of the State is specifically mentioned that seals intact and identical with specimen seal. So, the first part of Rule 46 is complied and at the end of the table, in Column No.3, it

is mentioned that test done for Diolofence Potassium is Asseay for Serratiopentidase, which is mentioned in the table. Mentioning "***Tyrosine Method***" by the Analyst is sufficient compliance of second part of Rule 46. On close analysis of Form 13 report of Government Analyst of State of Andhra Pradesh disclosed the strict adherence of Rule 46. Consequently, the contention of the learned counsel for the petitioners is not based on any material. Therefore, I find that the analyst complied with the requirements of Rule 46 strictly and issued Form 13 report. Hence, on this ground, the proceedings cannot be quashed.

POINT NO.3:

The third contention raised by the learned counsel for the petitioners is that the respondent did not comply with Section 25(3) & (4) of the Act.

Section 25 deals with the reports of Government Analysts and it reads as follows:

> (1) The Government Analyst to whom a sample of any drug[1][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.
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> (2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken[2][and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in any prosecution in respect of the sample.
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> (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[3][or the person whose name, address and other particulars have been disclosed under section 18A] 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.
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> (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[1][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.
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> (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.

Finally, it is contended that the respondent did not comply with the requirements contemplated under Section 25 (2), (3) & (4) of the Act and no sufficient opportunity was afforded to the petitioner to refer 3rd sample to the Central Drug Laboratory and by the time, the petitioner received 3rd sample and analyst report of the State, the shelf life of the drug was over, thereby on this ground also the proceedings can be quashed.

Whereas, the learned counsel for the respondents contended that no prejudice was caused to the petitioner on account of delay and that too the analyst report was sent to the petitioner much earlier to the completion of the shelf life of the Drug, but the petitioner did not utilize the opportunity and avoided to send the drug to the Central Laboratory, therefore, on account of latches on the part of the petitioner, the proceedings cannot be quashed.

In view of these contentions of both the counsel, it is necessary to advert to Sections 25 (2), (3) & (4) of the Act.

Section 25 (2) of the Act mandates that the Inspector on receipt of the analyst report 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.

Section 25 (3) of the Act attaches conclusiveness to the report of the analyst 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.

Thus, on close analysis of sub-sections 2 and 3 of Section 25 of the Act, it is the duty of the Drug Inspector to send one copy of the report to the person from whom the sample was taken and another to the person, whose address particulars were disclosed under Section 18-A of the Act.

In the present case, it is the contention of the petitioner that though the M/s Nutide Pharmaceuticals, represented by its Proprietor D.Satya Babu disclosed details and address of the manufacturer under Section 18-A of the Act, the report was allegedly sent to the petitioner in compliance of Section 25 (2) (3) and (4) of the Act by letter dated 23.02.2008, the petitioner sent a reply dated 05.03.2008, in which he requested to send a copy of the analyst report along with one portion of the sealed sample of the drug immediately. Again, Sri D.Satya Babu, Proprietor of M/s Nutide Pharmaceuticals addressed another reply in continuation of his earlier reply dated 19.02.2008 furnishing the particulars and details of the manufacturer as required under Section 18-A of the Act. The respondent addressed a letter dated 14.03.2008 to the

petitioner enclosing copy of the analyst report and one sealed sample portion of the subject drug by registered post and acknowledgement was received on 25.03.2008. On 26.03.2008 Sri A.Sambabiah Naik informed the Court about the subject drug, which was declared as not of standard quality drug by the Government Analyst and deposited the 2nd sample portion of the drug into Court for safe custody.

According to the admissions made in the petition, the shelf life of the drug was expired in the month of June, 2008, but the report was received by the petitioner on 25.03.2008 i.e. almost three (3) months prior to the expiry of shelf life of the drug.

On 19.03.2008 without waiting for receipt of part of sealed sample and analyst report, petitioner addressed a letter informing that he did not receive sealed sample portion of the drug and analytical report of the State Analyst. Thereupon, Sri A.Sambaiah Naik, Drug Inspector, addressed a letter dated 27.03.2008 to the petitioner while enclosing another copy of the certificate of test of analysis in Form-13 vide 0111/DCL/2008 dated 17.01.2008 for information by registered post, receipt of the same was acknowledged on 01.04.2008. The petitioner did not deny receipt of Form 13 report on 25.03.2008. Thereafter, the petitioner gave reply dated 05.04.2008 while enclosing the copy of the certificate of analysis given by Shagun Testing Laboratories, Gurgaon and Copy of certificate of Analysis given by M/s Brawn Laboratories Ltd (Firm), 13, New Industrial township, Faridabad and challenged the State Government Analyst report, expressing its intention to send the drug to the Central Drugs Laboratory, Kolkota though Court.

As seen from the letter dated 05.04.2008 the petitioner did not make any request to send the sample deposited in the Court for re-testing, but challenged the report of the State Government Analyst, with a request to re-test the drug in the Central Drugs Laboratory, Kolkata. But surprisingly, on 02.06.2008 the petitioner made a request to send the sample of drug deposited with the Court to the Central Drugs Laboratory, Kolkata for re-testing. When the petitioner received the letter dated 27.03.2008 on 01.04.2008, he has to make a request for re-analysis or re-testing by the Central Drugs Laboratory, Kolkata within 28 days as contemplated under Section 25 (3) of the Act. Initially, copy of the report was sent by letter dated 23.02.2008, however the petitioner denied the receipt of the said copy along with the letter and made a request conveniently, to avoid to make request as required under Section 25 (3) of the Act, by letter dated 19.03.2008 to send sealed sample portion along with analyst report of the State. Sri A.Sambaiah Naik while reiterating sending copy of the report along with letter dated 23.02.2008 again enclosed another copy of the report to the letter dated 27.03.2008 and receipt of the same was acknowledged on 01.04.2008, and petitioner gave reply dated 05.04.2008 expressing his intention to get the drug re-tested in the Central Drugs Laboratory, Kolkata, but he did not make any request under Section 25 (4) of the Act in the letter dated 05.04.2008. Conveniently, on 02.06.2008 the petitioner made a request to send the sealed sample portion deposited in the Court to the Central Drugs Laboratory, Kolkata for re-testing. Thus, by the date of making request by letter dated 02.06.2008 the period of 28 days as contemplated under Section 25 (3) of the Act was over.

Thus, the petitioner did not avail the opportunity under Section 25 (3) of the Act.

Even otherwise, the allegation made in the petition is that the petitioner is not aware whether the sample was sent to the Central Drugs Laboratory, Kolkata as requested by him and any report was received before expiry of the shelf life and it is not a part of the report before the Court.

As seen from the conduct of the petitioner, the respondent sent a letter allegedly annexing a copy of the report of the analyst of the State on 23.02.2008, but conveniently the petitioner sent a reply on 05.03.2008 requesting to send copy of analyst report along with the sealed sample of the drug. Again on 14.03.2008, Sri Sambaiah Naik addressed a letter enclosed a copy of the analyst report and sealed sample portion of the drug and receipt of the same was acknowledged on 25.03.2008. On 26.03.2008 Sri Sambaiah Naik, Drug Inspector, deposited the 2nd sample portion of the drug into the Court for safe custody as per the procedure. The petitioner again made a request through letter 19.03.2008 to send copy of the analyst report and in view of the request of the petitioner, to which Sri Sambaiah Naik, Drug Inspector gave reply dated 27.03.2008 by registered post while enclosing another copy of the analyst report in Form – 13 and the same was received on 01.04.2008. The petitioner did not dispute about the receipt of the 2nd sealed sample portion of the drug along with letter dated 14.03.2008, but denied the receipt of analyst report in Form – 13 even before reaching the letter dated 25.03.2008, somehow to allow the shelf life time of the drug expired conveniently and made a request belatedly on 02.06.2008 just before expiry of the shelf life time of the drug. When the petitioner

received analyst report in Form – 13 on 01.04.2008, nothing prevented the petitioner to make an application within 28 days from the date of receipt of such report, but made a request on 02.06.2008 i.e. after expiry of 28 days. Therefore, the respondent cannot be blamed for non-compliance of Section 25 (3) and (4) of the Act.

When an identical question came up before the Apex Court in "***Medicamen Biotech Ltd. v. Rubina Bose, Drug Inspector***[2]" (referred supra) the Apex Court held that non compliance of Sections 25(2),(3) & (4) of the Act vitiates the entire proceedings.

No quarrel about the law declared by the Apex Court in the above said judgment, but here the conduct of the petitioner itself indicating that the petitioner delayed in making request and submitted request after expiry of 28 days from the date of receipt of analyst report and sealed sample portion. Therefore, the principle laid down in the above judgment has no application.

In "***Amery Pharmaceuticals and another v. State of Rajasthan***[3]" the Apex Court considered the scope of Section 25 (3) of the Act and consequences of failure to comply with the requirement under Section 25 (3) & (4) of the Act and held that if any of the persons who receives a copy of the report of the Government Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Government Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the Government

[3] AIR 2001 SC 1303

analyst and also part of sample, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other modes by which such facts can be disproved. He can also avail himself of the remedy indicated in sub-Section (4) of Section 25 of the Act by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory since if the manufacturer is disabled from challenging the facts contained in the document it would visit him with drastic consequences when he is arraigned in a trial.

In view of the judgment of the Apex Court no Court is under a compulsion to cause the said sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the Court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in Section 25 (4) of the Act is produced in Court the conclusiveness mentioned in that sub-section would become incontrovertible. When the provision can be interpreted in such a way it is not congenial to the interest of criminal justice to acquit the manufactures of forbidden medicines or drugs on a technical ground that there is a lacuna in the legislation by not supplying copy of the report of the Government Analyst to the manufacturer in certain situations.

Thus, in view of the law declared by the Apex Court in ***Amery Pharmaceuticals and another v. State of Rajasthan (referred supra)*** when there is a long delay in making request as required under Section 25 (3) and (4) of the Act, the Court is not under obligation to get the sample portion deposited in it tested by the

Central Laboratory, Kolkata and on such technical ground the manufacturer cannot be acquitted.

Section 482 of Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a court has authority to make any order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the court exists, namely to promote justice and to prevent injustice.

The essential object of the criminal law is to protect society against criminals and law breakers. For this purpose, the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer with prescribed punishment for the offences they committed and at the same time, the procedure is intended to protect the innocent people from unlawful prosecutions at the threshold itself, to avoid peril of facing trial. Thus, Section 482 of Cr.P.C. vests unbridled power on the courts to exercise its jurisdiction to give effect to an order under the Code or to prevent abuse of the process of Court or to otherwise secure the ends of justice. The Code also controls and regulates the working of the machinery set up for the investigation and trial of offences. On the one hand it has to give adequately wide powers to

make the investigation and adjudicatory processes strong, effective and efficient, and on the other hand, it has to take precautions against errors of judgment and human failures and to provide safeguards against probable abuse of powers by the police or judicial officers. This often involves a "nice balancing of conflicting considerations, a delicate weighing of opposing claims clamouring for recognition and the extremely difficult task of deciding which of them should predominate". Thus, the Code obviously conferred power under Section 482 of Cr.P.C. to quash the proceedings in crime by conferring inherent power on the High Courts of all the States being higher court of the State.

Section 482 of Cr.P.C. makes it clear that the provisions of the Code are as intended to limit or affect the inherent powers of the High Courts. Obviously the inherent power can be exercised only for either of the three purposes specifically mentioned in the section. Such inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provision of the Code, the power under Section 482 Cr.P.C. can come into operation, and the court can exercise subject to other limitations Therefore, the power under Section 482 of Cr.P.C. can be exercised subject to the following conditions:

> "1. The jurisdiction is completely discretionary. The High Court can refuse to use the power.
>
> 2. The jurisdiction is not limited to cases that are pending before the High Court. It can consider any case that comes to its notice (in appeal, revision or otherwise).

3. This power can be invoked only in an event when the aggrieved party is being unnecessarily harassed and has no other remedy open to it.

4. The High Court, under section 482, does not conduct a trial or appreciate evidence. The exercise of this power (although it has a wide scope) is limited to cases that compel it to intervene for preventing a palpable abuse of a legal process.

5. The High Court has the power to provide relief to the accused even if he/she has not filed a petition under section 482.

6. This power cannot be exercised if the trial is pending before the apex court and it has directed the session judge to issue a non-bailable warrant for arresting the petitioners.

7. The power under Section 482 is not intended to scuttle justice at the threshold but to secure justice.

8. This power has to be exercised sparingly with circumspection and in the rarest of rare cases, but cannot be held that it should be exercised in the rarest of rare cases – The expression rarest of rare case may be exercised where death penalty is to be imposed under Section 302 of IPC but this expression cannot be extended to a petition under Section 482 CrPC.

9. So long as inherent power of Section 482 CrPC is in statute, the exercise of such power is not impermissible.

10. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

11. Where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

12. In proceedings instituted on complaint, exercise of inherent powers under Section 482 CrPC to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

13. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged

and whether any offence is made out even if the allegations are accepted in toto.

14. All Courts, whether civil or criminal possess, in the absence of any express provisions, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice."

The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is "***State of Haryana v. Bhajanlal***[4]", wherein the Apex Court laid down the following seven guidelines:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a

[4] 1992 Supp.(1) SCC 335

> criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Earlier to the Judgment in "**State of Haryana v. Bhajanlal"** (referred supra), in "***R.P. Kapur vs. State of Punjab***[5]**"** the Apex Court laid down the following guidelines:

> "(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
>
> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
>
> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
>
> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

The same principle was reiterated in "***Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.***[6]**"** In the said Judgment, the Apex Court categorically held that inherent power can be exercised to prevent abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings.

Keeping in mind the broad guidelines laid down by the Apex Court in various Judgments, the High Court is bound to decide the

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[5] AIR 1960 SC 866
[6] 2011(12) SCC 437

petitions before it, filed under Section 482 Cr.P.C. exercising such power sparingly in exceptional circumstances.

As stated earlier the Apex Court in "***State of Haryana v. Bhajan Lal***" (referred supra) laid down certain guidelines to exercise jurisdiction under Section 482 of Cr.P.C. According to guideline No.1 the High Court can exercise its inherent power to quash the criminal complaint where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

The receipt of analyst report of the State along with letter dated 23.02.2008 and the same was received by the petitioner is not a disputed question and again at the request of the petitioner dated 05.03.2008 the Drug Inspector Sri Sambaiah Naik enclosed another copy of the analyst report to the letter dated 14.03.2008 and the receipt of the same was acknowledged on 25.03.2008. In the meanwhile, again on 19.03.2008 the petitioner made a request to send the copy of the analyst report contending that the petitioner did not receive sealed sample portion of the drug and analyst report of the State, on making such allegation Sri Sambaiah Naik addressed a letter on 27.03.2008 enclosing another copy of the report in Form-13 without enclosing sealed sample portion, since it was already sent by letter dated 14.03.2008. Whether the petitioners received copies as contended by the respondent enabling them to file application within 28 days with a request to refer the Drug to the Central Drugs Laboratory are all question of facts and such question cannot be decided in the proceedings under Section 482 of Cr.P.C.

In view of the limited scope of Section 482 of Cr.P.C., I find that it is not a fit case to quash the proceedings as there are disputed questions of fact regarding compliance of Section 25 (2) (3) and (4) of the Act. Hence, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dated 25.01.2017
Sp/Ksp