IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-1687-MA of 2014

Date of Decision: 28 - 3 -2017

State of Haryana through Drug Control Officer, Fatehabad **.....Appellant**

v.

M/s Parkin Laboratory and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH

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Present: Mr.P.P.Chahar, D.A.G. Haryana
for the appellant.

Mr.Atul Lakhanpal, Sr. Advocate with
Ms.Babli Singh, Advocate
for respondents No.2 to 5.

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RAJ MOHAN SINGH J.

State of Haryana through Drug Control Officer, Fatehabad has preferred this appeal against the judgment of acquittal dated 7.3.2014 passed by the Chief Judicial Magistrate, Fatehabad along with application under Section 378 (3) Cr.P.C. for grant of leave to apeal.

Prosecution was launched against the accused-

respondent M/s.Parkin Laboratory etc. by way of written complaint moved by the Drug Control Officer, Fatehabad. It was alleged that on 2.5.2007, the then Drug Control Officer had taken sample from the Medicines Store of Civil Surgeon, Fatehabad. Samples of Parimol Cold batch No.RPT-898, M/D 10/2006, E/D09/2008 manufactured by the accused No.1 M/s.Parkin Laboratory was taken vide Form No.17 and the same was sent for analysis to the Government Analyst, Haryana on the next day. Report from the Haryana Government Analyst was received on 23.7.2008 and the sample was declared as `Not of Standard Quality'. On receipt of sample report, notice was served upon Raj Kumar, Chief Pharmacist, In-charge, Medicines Store of the office of Civil Surgeon, Fatehabad on 1.8.2008 along with original test report. The drug in question was purchased from accused No.1 vide Invoice No.112 dated 11.11.2006.

On 12.8.2008, the then Drug Control Officer, namely, Raman Kumar along with SDCO L.C.Mittal, Hisar Zone visited the premises of accused No.1 along with Drug Inspector, Haridwar and notice dated 11.8.2008 along with sealed sample portion of the drug in question and original test report dated 23.7.2008 were served upon accused Brij Pal Singh. Brij Pal Singh by way of writing before the Inspecting team admitted that the drug in question was manufactured by his firm and the

same was sold to Haryana Government i.e. Civil Surgeon, Fatehabad through its distributor Parkin Distributor, Delhi vide Invoice No.694 dated 10.11.2006. However, Brij Pal Singh could not produce the required documents mentioned in the notice and spot memo was prepared accordingly on 12.8.2008. After necessary requirements, accused No.1 replied the notice through Shri R.K.Tyagi on 14.8.2008 and challenged the test report dated 23.7.2008. Another reply was also made by the accused through Shri R.K.Tyagi on 27.8.2008. Second sealed sample of the drug was sent to the Central Drugs Laboratory, Calcutta by the Court, whereby the Central Drugs Laboratory declared that the sample was not of standard quality for the reason that the sample did not confirm to the claim with respect to the contents of pseudoephidrine, acetaminophen and cholorpheniramine maleate. Since the accused contravened Section 18(C), read with Sections 17-B, 17-A, 17(c) and 16 of the Drugs and Cosmetics Act (for short, `the Act'), it was alleged that that the accused sold the spurious, adulterated, misbranded and not of standard quality drugs. The offences were claimed to have been committed under Sections 27(c), 27(b)(i) and 27(d) of the Act. It was alleged that accused Nos.1 to 3 had contravened Section 18-B, punishable under Section 28-A of the Act for having not supplied the nomenclature of the manufacturing unit and the names of technical persons. Since the complaint was

filed by the Public Servant, therefore, recording of the statements was dispensed with and process was issued against the accused persons by the Court.

In due course, the accused appeared before the Court and were granted bail. Thereafter, pre-charge evidence was led. After leading pre-charge evidence, the evidence of the complainant was closed by the Drug Control Officer by making statement on 10.5.2013. From the pre-charge evidence, a prima facie case for commission of offences was found to have been committed. All the accused were accordingly charge-sheeted on 25.1.2013. They did not plead guilty and claimed trial. Thereafter, the case was posted for after charge evidence. After-charge evidence was led by the prosecution and thereafter evidence of the complainant was closed by order of the Court on 3.1.2014 when the complainant failed to conclude the entire evidence.

Accused were examined under Section 313 Cr.P.C. whereby they denied all the allegations and opted to lead evidence in defence.

The trial Court ultimately acquitted the accused primarily on the ground that two reports were inter se contradictory on material aspects. As per report of the Government Analyst, the drug did not confirm “only with regard to (physical) description”. No adverse conclusion was drawn

with regard to ingredients of drug. The report of Central Drugs Laboratory pointed out that the sample of drug did not confirm the claim in respect of ingredients specified as pseudoephidrine, acetaminophen and cholorpheniramine maleate and there was no dis-conformity with regard to description. The trail Court also took notice of the fact that the expiry date of the drug was `September 2008' and report of the Central Drugs Laboratory was dated 30.9.2008. The date of report bore two dates i.e. 30.9.2008 followed by 8.10.2008. On both the notes, the case was found to be deficient viz-a-viz expiry of the drug and the report could not be accepted even though the same was treated to be conclusive piece of evidence as the same was reported on the last date of expiry or even expiry of the manufacturing of the drug. In both the eventualities, the drug was tested on 30.9.2008 and 8.10.2008. Same could not make the report to be conclusive in nature as the sample was on explanatory note. These facts were read in favour of the accused while giving the reasons for acquitting the accused. Thirdly, it was pointed out by the trial Court that the drug was required to be kept in perfect storage conditions in the premises of the hospital. The particulars of the storage condition were required to be specified on Form 35 but the requirement of such storage condition was absent in terms of document i.e. Form 35 from the record of the prosecution. The prosecution

failed to prove that the drugs were kept in perfect storage condition of the hospital and there were viable storage conditions of the hospital. The In-charge of the Medicines Store of Civil Hospital was examined as a witness and he had admitted that the drugs were received directly from the manufacturing company and at the time when the drugs were received in the Store, the same were in fit condition. Form 39 from the Government approved laboratory was also submitted along with consignment of drugs showing the certification of the drugs to be of perfect quality. Since the storage condition of the hospital were not proved by way of leading evidence, therefore, the trial Court also ruled that the contamination of drug due to external factors could not be ruled out. Even this fact was admitted by Raman Kumar, Drug Control Officer in his cross-examination.

I have considered the submissions made by learned counsel for the parties during the course of arguments.

Apparently the analysis of the drug failed in first report submitted by the Haryana Government Analyst as the tablets were found rough edging and surface and having light brown patches all over the surface but under the statute the accused had an option to get the sample re-tested from the Central Drugs Laboratory. That right was exercised by the accused irrespective of the report from the Haryana Government Analyst

and could not be diluted by the test conducted by the Central Laboratory which was questionable as the same was done on the last date of expiry of drug in view of dates being 30.9.2008 and 8.10.2008. In the light of both the reports, one thing was apparent that purity of drug was not found in both the reports. But the certification by the Central Drugs Laboratory was on account of a legal right given to the accused for re-analysis and the report given by the Haryana Government Analyst was required to be corroborated by the Central Laboratory. The sample itself was tested on the last date of expiry date of the drug or thereafter. Even absence of inconclusive of report of Central Laboratory, the prosecution case could not be appreciated on that front. The storage condition was also not conducive as per the evidence brought on record. Since the drug was supplied to the Haryana Government duly accompanied by Form 39 from the Government approved laboratory, therefore, there was no material on record to contradict the approval given by the Government approved laboratory which was attached to the supply of drugs to the Government. A perusal of the complaint did not show any incriminating allegation as to how the drug supplied to the Government was perceived to be sub standard in the absence of any complaint made by any one. No evidence was led whether the drug supplied to the Government on being administered to

some person resulted in any mis-happening or yielded some adverse impact on the patient. In the absence of any such incriminating material, the certification done by the Government approved Laboratory on Form 39 attached could not be countered by two report. Report from the Central Drugs Laboratory was required to be in consonance with the report of Haryana Government Analyst. Since the drug could not be tested on the legal parameters by the Central Drugs Laboratory within the period of expiry, therefore, in my considered opinion, the findings recorded by the trial Court cannot be faulted with.

In view of the above, I do not find any perverse or error of jurisdiction in the impugned order of acquittal passed by the trial Court. The application for leave to file the appeal and the appeal itself are liable to be dismissed. Ordered accordingly.

(RAJ MOHAN SINGH)
JUDGE

March 28, 2017

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