

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15 of 2015

Arising Out of PS.Case No. -13 Year- 2013 Thana -GOVERNMENT OFFICIAL COMP. District-
SARAN

=====

Mr. Bharat V. Daftary, the Managing Director, Bharat Serums and Vaccines Ltd,
17th Floor, Hoechst House, Nariman Point, P.S.-Cuffe Parade, Mumbai

.... Petitioner/s

Versus

1. The State of Bihar &
2. Anil Kumar Sah, Drug Inspector, Sara-1, Civil Surgeon Office Premises,
Chapra, Saran.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
Mr. Sunit Kumar, Advocate

For the Opposite Party/s : Mr. APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-07-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 13.09.2013 passed by the Chief Judicial Magistrate, Saran, Chapra, in C.G.S. No.13 of 2013 (T.R. No.4023 of 2013/3485 of 2014) by which the learned Magistrate has taken cognizance against the Petitioner for the offence under Section(s) 27-d and 28 of the Drugs and Cosmetics Act, 1940.

2. Counsel for the Petitioner submits that impugned order is not in accordance with law. Petitioner is Managing Director of the Company and being Managing Director, he is not responsible for any allegation as made in the Complaint Petition. The Complainant has not made the Company as an accused in the



Complaint Petition. Counsel for the Petitioner further submits that sample of drugs were not taken in compliance of Section 23(4) of the Drugs and Cosmetics Act, which is alleged to have been seized and sent for laboratory examination. It has further been submitted that because of not following proper procedure as provided under Section 23(4) of the Drugs and Cosmetics Act, the Petitioner has lost his right as given under the provision of Section 25(4) of the Drugs & Cosmetics Act by which he was entitled to send the aforesaid samples for retest.

3. Learned counsel for the Petitioner further submits that Bharat Serums and Vaccines Ltd. is a reputed Company and is producing vaccine following all procedure. There is no complaint earlier against its product. Counsel for the Petitioner further submits that after the drugs came out from the depot of the Company, it is responsibility of the agency, who has taken the drug from the depot of the Company, to maintain its temperature as required, otherwise, drugs will lost its potency.

4. Learned counsel for the State has submitted that the Court below on the basis of official complaint filed by the Complainant, who was Drug Inspector, has taken cognizance of the offence.

5. From perusal of the complaint, it appears that Complainant has mainly alleged that sample of Snake venom



antiserum 10 ml. Batch No.A2509019, Manufacturing Date-08/09 and Expiry Date-07/11, manufactured by Bharat Serum and Vaccines Limited was taken from Drug Store of Civil Surgeon-cum-Chief Medical Officer, Chapra, for analysis. The samples were sent to Government Analyst, Central Drug Laboratory, Central Research Institute, Kasauli, Himachal Pradesh, under Section 23(4)(i) of the Drugs and Cosmetics Act. The Central Drug Laboratory, Kasauli, Himachal Pradesh, vide its report dated 28.03.2011, declared the samples substandard. It is mentioned in the report that although expiry of the aforesaid sample was mentioned as 07/2011, date of report is 28.03.2011 when the aforesaid serum was found ineffective.

6. The Complainant has mentioned in the complaint that he vide his letter dated 16.04.2011 asked the supplier to furnish information with regard to record of purchase and supply relating to drug in question. He also sent letter to the Manufacturer on 16.04.2011 to confirm Batch Number. When no reply was received then finally on 26.08.2013 after taking necessary permission to launch prosecution against the aforesaid establishment present complaint has been filed.

7. During hearing of this application, counsel for the Petitioner has drawn attention of this Court to the provision of Section 23(4) of the Drugs & Cosmetics Act, which provides manner in which sample is to be collected by the Complainant. Aforesaid



provision is quoted below.

“Section 23 - Procedure of Inspectors

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:-

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug [or cosmetic]; and

[(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.]”

8. Section 23(4) of the aforesaid Act gives discretion to the Court at the request of the aggrieved party to send the sample for retesting.

9. Section 25(4) is quoted below:

“25. Reports of Government Analysts.—

(4) Unless the sample has already been tested or analyzed 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.”

10. In this case, it appears from the Complaint Petition that only one sample was collected by the Drug Inspector, which was sent to the Laboratory for examination. There is no mention in the complaint that two other samples were also prepared. In terms of Section 23(4) of the Drugs & Cosmetics Act, one of the samples was to be given to the Company.

11. Similarly, this Court finds that the Petitioner after lodging of the complaint could not get opportunity to exercise his right under Section 25(4) of the Act to insist for retesting of the sample. The Complaint Petition was filed in the year 2013, whereas, expiry date of the serum was 07/2011. As such, the medicine had already expired as per Batch Number of the Company.

12. Counsel for the Petitioner has relied on the judgment of the Hon’ble Supreme Court reported in *(2008) 7 SCC 196 (Medicamen Biotech Ltd. & anr. Vs. Rubina Bose, Drug Inspector)*, wherein, Hon’ble Supreme Court has held that Appellants’ right under Section 25(3) and 25(4) is lost due to delay in filing complaint. Accordingly, Hon’ble Court has quashed the complaint filed by the Complainant.

13. Counsel for the Petitioner has further relied on the



judgment of Supreme Court in the case of *M/s Cadila Health Care Ltd. & Ors. vs. The State of Rajasthan & ors.* reported in *2007 Cri. L. J. 1899*, wherein, it has been held that filing of complaint after two years and half of expiry of shelf life of drug is violative of Section 34(1) and 25(4) of the Drugs & Cosmetics Act, 1940.

14. Therefore, this Court is of the view that impugned order passed by the learned Court below with respect of the Petitioner is not in accordance with law.

15. In view of such, impugned order dated 13.09.2013 passed by the Chief Judicial Magistrate, Saran, Chapra, in C.G.S. No.13 of 2013 (T.R. No.4023 of 2013/3485 of 2014) along with entire criminal proceeding against the Petitioner is hereby quashed.

16. This application is, accordingly, **allowed.**

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26-07-2018
Transmission Date	26-07-2018

