

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 833 OF 2017

Medi Xpert India Ltd.

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. Niranjan Mundargi, Senior Counsel a/w Mr. A. Singh, Mr. A. Wagh
i/b. Mr. S. Kasar, Advocate, for the Applicant
Mr. V. Chate, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.01.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned Clause (3) of the Order dated 17.04.2017 passed by the learned Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, below Cri. Application No. 254 of 2017 as well as the Order dated 19.06.2017 passed by the learned Additional Sessions Judge, Sessions Court, Greater Mumbai, by which the Applicant's Revision Application challenging Clause (3) of the impugned Order came to be dismissed.

3. Learned counsel for the Applicant submitted that the condition imposed in Clause (3) of the impugned Order dated 17.04.2017 by the learned Magistrate was unwarranted and unjustified. He submitted that the goods in question which were handed over to the Applicant vide the impugned order were admittedly not the raw material sold by the Complainant to the accused. He submitted that the Applicant had, in fact, produced receipts to show that medicines (not raw material) which was seized by the police belonged to the Applicant. He relied on the police report dated 30.03.2017 submitted by the concerned investigating officer to the Magistrate.

4. Learned APP opposed the Application.

5. Perused the papers as well as Clause (3) of the impugned order. According to the prosecution, the Complainant – Sanjay Manoharlal Sanghvi had sold raw material i. e. bulk drug or active pharmaceutical ingredients to accused i. e. M/s. Soumil Enterprises. Pursuant to the said transaction, cheques were issued by the directors of the said Company i. e. M/s. Soumil Enterprises in favour of the Complainant which came to be dishonoured. Pursuant thereto, the Complainant – Sanjay Sanghvi lodged a Complaint / FIR dated

07.12.2016 as against M/s. Soumil Enterprises and others (not the Applicant). It appears that during investigation, it transpired that the said goods i. e. raw material supplied by the Complainant to the accused was sold by them to various companies and persons. Accordingly, search was also carried out in the Applicant's Company situated at Hall No. 1, Khasara No. 883, Nala Road, Village : Rithala, Rohini, Delhi – 110085. In the said search, the police seized certain medicines (not raw material). Pursuant thereto, the Applicant filed an Application before the learned Magistrate under Section 457 of the Code of Criminal Procedure and sought release of the goods i. e. medicines, as the goods were of a perishable nature. The learned Magistrate granted interim custody of the goods i. e. medicines on the Applicant executing bond of Rs. 86,00,000/-. In addition, the learned Magistrate imposed the following condition No. 3 which reads as under :-

“3. The applicant has liberty to dispose off the goods on condition to deposit the amount of Rs. 85,09,000/- within two months.”

6. Being aggrieved by the aforesaid condition No. 3 imposed by the learned Magistrate vide Order dated 17.04.2017, the Applicant filed a Revision Application in the Sessions Court. The learned Sessions Judge rejected the said Application vide Order dated 19.06.2017.

7. A perusal of the complaint shows that what was sold to M/s. Soumil Enterprises by the Complainant was raw material / goods, used for preparing medicines. A perusal of the report dated 30.03.2017 filed by the police before the learned Magistrate shows that the goods which were seized was not the raw material, sold by the Complainant to the accused. Admittedly, the Applicant is not an accused in the said case. It also appears from the police report that the Applicant had produced documents in support of the medicines (not raw material) seized. In this light of the matter, the condition imposed by the learned Magistrate was harsh and completely unwarranted.

8. Accordingly, the condition No. 3 imposed by the learned Additional Chief Metropolitan Magistrate vide Order dated 17.04.2017 is quashed & set aside. Similarly, the Order dated 19.06.2017 passed by the learned Additional Sessions Judge is also quashed and set aside. Rest of the conditions to remain as it is.

9. Accordingly, the Application is allowed in the aforesaid terms.

All concerned to act on the authenticated copy of this
order.

(REVATI MOHITE DERE, J.)