

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018
Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.10164 of 2012 & 23859 of 2011
and
M.P.Nos.1 & 2 of 2011 and 1 & 2 of 2012

Crl.O.P.No.10164 of 2012

1.M/s.Zeus Pharmaceuticals,
Rep. by Mr.Raghu Raghav Balasaria,
Plot No.116, EPIP-1,
Jharmajri, Baddi, Distt., Soland,
Himachal Pradesh - 173 205.

2.Raghu Raghav Balasaria,
S/o.Madhusudan Balasaria. ... Petitioners/Accused
Nos.1 & 2

Vs.

The State of Tamil Nadu represented by
R.Kannan, Drugs Inspector,
Thiruvallur Range,
Office of the Assistant Director of
Drugs Control,
Thiruvallur Zone,
201, J.N.Road,
Thiruvallur - 302 001. ... Respondent/Complainant

Crl.O.P.No.23859 of 2011

1.Madhusudan Balasaria,
S/o.Brij Lal Balasaria.

2.Aditya Balasaria,
S/o.Madhusudan Balasaria. ... Petitioners/Accused
Nos.3 & 4

Vs.

The State of Tamil Nadu represented by
R.Kannan, Drugs Inspector,
Thiruvallur Range,
Office of the Assistant Director of
Drugs Control,
Thiruvallur Zone,
201, J.N.Road,
Thiruvallur - 302 001.

... Respondent/Complainant

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records of the complaint in C.C.No.72 of 2009 on the file of the Chief Judicial Magistrate Court, Thiruvallur and quash the same as against the petitioners above named.

For Petitioners : Mr.T.Srinivasa Raghavan
[in both the Crl.O.P.Nos.]

For Respondent : Ms.V.Saratha Devi,
[in both the Crl.O.P.Nos.] Government Advocate [Crl.Side]

COMMON ORDER

The above said Crl.O.P.No.10164 of 2012 and Crl.O.P.No.23859 of 2011 are directed against C.C.No.72 of 2009 pending trial before the Chief Judicial Magistrate, Thiruvallur for the offence punishable under Section 27-D of the Drugs and Cosmetics Act 1940.

2.In Crl.O.P.No.10164 of 2012, the petitioners are Accused Nos.1 and 2 and in Crl.O.P.No.23859 of 2011, the petitioners are Accused Nos.3 and 4 in C.C.No.72 of 2009. Since, the petitioners/accused and the respondent/complainant are common from C.C.No.72 of 2009 and the points involved are similar, I decided to dispose of both the Criminal Original Petitions by way of a common order.

3.For the sake of clarity and brevity the petitioners are referred as "Accused" and the respondent as "complainant" as found in the complaint. These Criminal Original Petitions are for the offence under the Drugs and Cosmetics Act 1940 hereinafter referred as "the Act".

4.The case is that the complainant, who has been notified under Section 21 of the Act is empowered to file the complaint. The 1st accused is the manufacturer represented by the 2nd accused, the 2nd accused is the authorized signatory of A1. The

3rd and 4th accused are the partners of A1. On 05.02.2008, on the orders of the Director of Drugs Control, Tamil Nadu, Chennai Vide reference No.1338/IW1/2008 dated 04.02.2008, the Drugs Inspector, George Town, has drawn a sample of Rabby-20 (Rubeprazole Sodium tablets) batch No.RB006, Manufacture date 07/2007 expiry date: 06/2009 manufactured by the 1st accused was sold at M/s.Dadha Ganesh Pharmaceuticals, Pattabiram, Chennai - 72.

5.The Drug Inspector during her investigation on 05.02.2008, had taken samples in Form-17 bearing No.052270 dated 05.02.2008 and the same was sent to Government Analyst in Form-18 dated 05.02.2008. The Government analyst in Form-13 bearing No.02487/D.2007 dated 17.03.2009, had given a report that sample does not conform to the label claim with reference to the content of Rabeprazole Sodium tablets. Thereafter, the Drug Inspector, George Town, who had conducted the inspection had transferred the file on 01.04.2009, to the Drug Inspector, Thiruvallur.

6.A show cause memo dated 02.04.2009 under Section 18(a)(i) of the Act was served to M/s.Dadha Ganesh Pharmaceuticals, Pattabiram asking the details of purchase and distribution. By reply dated 02.04.2009, it had informed that the said drug was acquired from M/s. Dhandeep Pharma and Surgicals and a show cause memo was issued on 03.04.2009 to M/s.Dhandeep Pharma and Surgicals asking for details. M/s. Dhandeep Pharma replied that the said drug was acquired from M/s.Lehar Pharma Distributors. Thereafter, show cause Memo dated 17.04.2009 was issued to Lehar Pharma Distributors to furnish the details, they replied on 20.04.2009 that the said drug was acquired from Marksans Pharma Ltd., (formerly Glenmark Labs Ltd.,). Thereafter, show cause memo was issued on 22.04.2009 to M/s.Marksans Pharma Ltd., the said letter was returned to the complainant by postal authorities with endorsement "Left without address" on 11.05.2009. Thereafter, the respondent made a request to the Director of Drugs control for manufacture level investigation and in the carton of Rabi-20 it was manufactured by M/s.Zeus Pharmaceuticals, A1 and a Show cause notice dated 11.05.2009 with a copy of the analysis report as per section 25(2) of the Act was sent to A1 for the drug which has been declared as "not of standard quality", which is punishable under Section 27-D of the Act. The third portion of the sample was sent to A1. A reply was from A1 dated 21.05.2009 was received by the complainant on 27.05.2009 that the sample as per their result was "OK", but A1 have not submitted the drug license, endorsement of the said product in the drug license, details of the partnership of the firm, name of the authorized signatory.

7.It had come to know that A1 has converted the Partnership firm to a Company namely M/s.Venus Bio-Science Pvt. Ltd., the partners of A1, A3 and A4 are the Directors of Venus Bio Pvt. Ltd., The Authorized signatory A2 and A4 are the sons of A3. As the reply submitted by A1 was not satisfactory, sanction was obtained and thereafter, the case was filed against A1 to A4. In the meanwhile, on 16.06.2009, the remaining portion of the sample was sent to Central Lab Kolkatta. The final report of analysis from Central Lab was received on 16.07.2009, which shows that the sample was not of standard quality. The label claim of drug shows 20 mg. of Rabersol sodium in which the prescribed level would be between 90% to 100% and the report given by the State Government that the sample contain only 2.14 mg., which is 10.7% lesser than the standard prescribed. Further, the report given by the Central Lab Analyst shows that the sample does not conform to label claim as it contain 2.49 mg., which is 12.45% lesser than the prescribed limit. Hence, as per Section 25(4) of the Act, there is a conclusive evidence against the accused.

8.The contention of A1 and A2 is that A2 had joined only on 29.10.2008 after A1 was converted to Joint stock company in the name of M/s.Venus Bio science Lab Ltd., till such time he was employed with M/s.Purna Enterprises and as such for an occurrence on 05.02.2008, A2 cannot be fastened with liability. The further contention is that the show cause notice was sent to A1 at the end period of expiry of the drug. The drug manufactured by A1 is of standard quality. Further contention is that no proper parties are made as accused. In the absence of dealer made as accused and there is no acceptable evidence to show that M/s. Zeus Pharmaceuticals supplied drugs to M/s.Marksans Pharma, it cannot be arrayed as A1. Further, the drug inspector, who took samples is not empowered to draw samples outside his territorial limits. Further, A2 is not the person, who is incharge of affairs of A.1 as on 05.02.2008.

9.The contention of A3 and A4 other than the points canvassed by A1 and A2 is that how the third sample was sent to 1st accused under Section 23(4)(3) when no information linking the 1st accused was obtained from any person under Section 18(a) and further, as per Section 24 the complaint is vitiated as manufacturer was denied an opportunity. Further, A1 was carrying on business at Himachal Pradesh and the distributors are in Tamil Nadu and the complainant had chosen to prosecute only the Manufacturer in a Court at Thiruvallur and not arraying the Distributors as accused, the complaint in Thiruvallur is not maintainable on the point of jurisdiction. Further, the complainant initiated action at the fag end of the expiry of the drug, thereby, depriving the accused to test the quality of the drug.

10.The other contention is that the Chief Judicial Magistrate, Tiruvallur has no jurisdiction to entertain the complaint under Section 32(2) of the Act as no Court inferior to that of Court of Sessions shall try an offence Under Chapter IV of the Act and the Chief Judicial Magistrate, Tiruvallur is not a Court of Sessions.

11.The accused had also relied upon following Citations of the Supreme Court:

1.STATE OF KARNATAKA VS. PRATAP CHAND AND OTHERS
reported in 1981(2) SCC 335.

2.STATE OF HARYANA VS. BRIJ LAL MITTAL AND OTHERS
reported in 1988 (5) SCC 343.

12.On the contrary the complainant submits that the complainant had carried out the investigation, the Drug Inspector, who had taken samples was empowered by the order of Director of Drugs and Control, Tamil Nadu vide reference No.1338/1W1/2008 dated 04.02.2008. The Drug Inspector, George Town had inspected M/s.Dhada Ganesh Pharmaceutical, Pattabiram, Tiruvallur District on 05.02.2008 as per the Act, 4 portions of samples were drawn of Rabi-20, on the same day one portion of sample was sent to the Government Analyst and the Government Analyst report dated 17.03.2009 states that the sample is not on the standard prescribed. Thereafter, show cause memo dated 02.04.2009 was sent to M/s.Dhada Ganesh Pharmaceutical asking to furnish the details of purchase and distribution. The investigation revealed that the drug was purchased by M/s.Marksans Pharma from A1 thereafter passed on to M/s.Dhada Ganesh Pharmaceuticals.

13.The complainant had produced the materials. On perusal of the same it is found that the complainant is empowered to conduct inspection as per the Act and A1's Partnership deed was collected from A2, A3 and A4 who are its Partners and through invoice dated 18.09.2007 of Zeus Pharmaceuticals the drug has been purchased by M/s.Marksans Pharma Ltd., there is an authorization letter authorizing A2. Further, there is a declaration by A3 and A4 dated 18.06.2008 authorising A2. There is a letter dated 19.05.2009 of A1 to M/s.Marksans Pharma Ltd., to withdraw Rabi-20 Batch No.RB006. The drug taken for sample is of the same batch for which stop further sale and distribution of the product was issued by A1. Further, it is submitted that there are enough evidence and material to proceed against the accused.

14.Considering the rival submissions and on perusal of the materials this court finds that the Drug Inspector, who conducted inspection is empowered as per the Act. Further, notices under Section 18(2) had been addressed seeking information about the drug received by the Distributors, which finally led to M/s.Marksans Pharma Ltd., and it is not known whether it was by design or otherwise that M/s.Marksans Pharma Ltd., had "left without address". Thereafter, from the label available on the Carton with strenuous effort the complainant could reach A1 by the time A1 had moved out and changed from Partnership firm to a Private Ltd.,Company with new name M/s.Venus Bio Science Pvt.Ltd. Both the Government Analyst report and the Central Lab report, which are the conclusive evidences of the fact as per Section 25 of the Act are against the accused. The drug sent to analysis was within the expiry period of the drug. The other point is with regard to jurisdiction and non-joinder of the distributors in Tamil Nadu. As per Section 19(3) of the Act it is permissible. Since the offence is punishable under Section 27-D it is triable by the Chief Judicial Magistrate, Thiruvallur.

15.It is seen that A1 is a Partnership Firm, A3 and A4 are its Partners. A2 is the authorized signatory. A3 is the father of A2 and A4. A1 is a family concern. The contention of A2 is that he had joined M/s. Venus Bio Science on 29.10.2008 only after M/s. Zeus Pharmaceuticals i.e. A1 firm converted into joint stock company is not correct. A3 and A4 the partners of A1, their conduct in non disclosure of the particulars to the Drug Inspector about the change of constitution of A1. Further, enough materials are available against A3 and A4 in commission of the above offence and there is nothing to show that A3 and A4 had exercised all due diligence to avert A1 in Commission of the offence. The Citation referred by the accused are not relevant to the facts of the above case.

16.In view of the above, these Criminal Original Petitions filed by A1 to A4 are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Thiruvallur.

2.R.Kannan, Drugs Inspector,
Thiruvallur Range,
Office of the Assistant Director of
Drugs Control,
Thiruvallur Zone,
201, J.N.Road,
Thiruvallur - 302 001.

3.The Public Prosecutor,
High Court, Madras.

ORDER IN
Crl.O.P.Nos.10164 of 2012 &
23859 of 2011

MP(CO)
CSL/14.11.2018