IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018
Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.14232 of 2011
and
M.P.No.1 of 2011

1.M/s.Anglo French Drugs & Industries Limited,
Plot No.4, Phase II, Peenya Industries Area,
Peenya, Bangalore - 560 058,
Rep. by Mr.Uddhav Kanoria, the Whole time Director.

2.Mr.Abhay Kanoria,
Chairman and Managing Director of
M/s. Anglo French Drugs & Industries Limited,
Plot No.4, Phase II, Peenya Industries Area,
Peenya, Bangalore - 560 058.

3.Mr.Uddhav Kanoria,
Whole Time Director of
M/s. Anglo French Drugs & Industries Limited,
Plot No.4, Phase II, Peenya Industries Area,
Peenya, Bangalore - 560 058.

4.Mr.Pradeep Joshi,
Vice President - Technical, Responsible Person of
M/s. Anglo French Drugs & Industries Limited,
Plot No.4, Phase II, Peenya Industries Area,
Peenya, Bangalore - 560 058.

..Petitioners/Accused
Nos.1 to 4

/Vs./

The State of Tamil Nadu represented by
T.S.Thamilchelvi, B.Pharm.,
Senior Drugs Inspector,
O/0.The Assistant Director of Drugs Control,
Zone-III, DMS Campus, No.359,
Anna Salai,
Chennai - 600 006. ..Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, calling for the records and quashing the complaint in C.C.No.3292 of 2011 pending on the file of the IV Metropolitan Magistrate, Saidapet, Chennai - 600 015.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Ms.V.Saratha Devi,
Government Advocate

O R D E R

The petitioners, who are accused Nos.1 to 4 in C.C.No.3292 of 2011 pending on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai for the offences under Section 18(a)(i) of Drugs and Cosmetics Act 1940, punishable under Section 27-D of the said Act, are the petitioners.

2.The respondent is the complainant, who is the Drug Inspector appointed and duly notified and has been empowered to file the complaint under Section 32(i) of the Act.

3.For the sake of Convenience the petitioners herein are referred to as "Accused" and the complainant as "Respondent" and the Drugs and Cosmetics Act is referred to as "Act" as found in the complaint.

4.The 1st accused is the Company, who is the manufacturer of the drug, the 2nd accused is its Managing Director, 3rd accused is its whole time Director and the 4th accused is the Vice President (Technical) the responsible person.

5.The complainant submits that on 30.08.2007 sample for analysis of Epilan with Phenobarbitone Tablets bearing B.No.:06712P; Date of Manufacutre: June 2007; Date of Expiry: May 2011 manufactured by the 1st petitioner was drawn for analysis under Form 17 dated 30.08.2007 by one R.Sivapunniyam, Senoir Drug Inspector Zone-III from the sale premises of the 1st accused company at Royapettah. Following the sample procedure as per Section 23 of the Act, the same has been sent for analysis under Form 18 dated 30.08.2007 to the Government Analyst, Chennai on the same day. On analysis the subject drug has been declared as "not of standard quality" under Form 13 in report No.01306-D/2007-08 dated 19.03.2010. The reason given is that the sample does not confirm to IP specification for uncoated tablets with respect to disintegration i.e, all the 18 tablets do not disintegrate in the medium of water maintained at 37+/-2cin 15 minutes as per IP specification. This is in contravention of Section 18(a)(i) of Act. On receipt of the analyst report on 29.03.2010 the complainant had sent a memo dated 31.03.2010 along with the analyst report to the accused under acknowledgment calling for explanation for the said contravention. In response to it the accused have disclosed that the subject drug has been acquired under invoice from the

1st accused and furnished the details of purchase and distribution. Further to it a Memo dated 12.04.2010 along with certified copy of the analyst report has been sent under Registered Post for explanation for contravention of the Section 18(a)(i) of the Act. A letter dated 12.04.2010 was received by the complainant on 16.04.2010 from the Manufacturer wherein they adduced evidence in contravention of Government Analyst report as per Section 25(3) of the Act. A show cause Memo dated 26.04.2010 was sent to the manufacturer to offer the explanation and a second copy of the report in form 13 along with analyst report was sent. Further, the 3rd sealed portion of the sample was sent separately by Registered parcel as required under section 23(4)(iii) of the said Act. In their reply, the manufacturer confirmed the sample received by them were as per standard and they do not agree with the report of the Govt.Analyst. Therefore, they would like to adduce evidence in contravention of the Govt.Analyst report and requested to send the sample to the Central Lab for retesting. On 29.11.2010 and 21.03.2011 the complainant submitted a detailed report to the Director of Drug control to prosecute the accused and on receipt of the sanction on 07.04.2011 the complaint was filed.

6.The contention of the petitioners is that in response to the Memo of the complainant, the 1st accused submitted its reply by 17.05.2010, which was received by the complainant on 21.05.2010. In their reply, they have submitted that the sample received by them confirm to the samples and they do not agree with the report of the Government Analyst and requested to send the sample to the Central Lab for retesting. Further contention is that though, the reply was sent within the stipulated period of 28 days the sample of these drugs were not sent to the Central Drugs Laboratory and had filed this quash petition.

7.Further, they submitted that though, the samples were drawn on 30.08.2007 and sent for analyst on the same day, the Government Analyst conducted the test on 19.03.2010, which is after a period of 2 years and 7 months. The complainant has not given any reason for the delay in the test, further, the quality of the sample collected depends heavy on the fact of humidity, temperature and light. Since, no averments have been made by the complainant as to the condition of the sample collected was stored the quality of the samples were eventually is in question and the report of the analyst cannot be accepted.

8.On these grounds relying upon the decision of the Hon'ble Apex Court of India reported in (2008) 7 SCC 196 in the case of MEDICAMEN BIOTECH LIMITED AND ANOTHER VS. RUBINA BOSE, DRUG INSPECTOR, that the complaint has been filed within one month before the expiry of the self life. Assailing these points the accused had put forth his case.

9.On consideration of the rival submissions and on perusal of the materials and documents, this Court by Co.No.295/2017 dated 24.08.2017 had sought a report from the Trial Court. The Trial Court by its report in Dis.No.1446/17 dated 30.08.2017 had submitted that the case was taken on file on 26.04.2011 and the test analyst report from Central Lab was received on 13.05.2011 and in that report it had been clearly mentioned as "the sample is not of standard quality as defined in the Drugs Act, 1940". As per Section 25(4) and the report is in conformity to the Act. In view of the above the contention of the accused are not acceptable.

10.Hence, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The IV Metropolitan Magistrate,
Saidapet,
Chennai - 600 015.

2.The T.S.Thamilchelvi, B.Pharm.,
Senior Drugs Inspector,
O/0.The Assistant Director of Drugs Control,
Zone-III, DMS Campus, No.359,
Anna Salai, Chennai - 600 006.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R. Ganesh Kumar, Advocate sr 71408.

Crl.O.P.No.14232 of 2011

RK(CO)
SP(15/11/2018)