

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.10361 of 2018

and

Crl.M.P.Nos.5307 and 5308 of 2018

1.M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

2.Mr.Bharat R.Desai,
Managing & Technical Director (Whole Time),
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

3.Ms.Hima B.Desai,
Director,
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

4.Mr.Pankaj S.Shah
Director,
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

5.Hemang J.Shah,
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

6.Mahendra A Turakhia
Director
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

7.Bharat Kumar Doshi
Director,
M/s.Bharat Parenterals Limited,
Vill.Haripura,
Ta.Savli, Dist.
Vadodara 391 520,
Gujarat.

...Petitioners

vs.

Union of India Rep. by
Drugs Inspector,
Office of the Deputy Drugs Controller (India),
Central Drugs Standard Control Organisation,
South Zone, 2nd Floor,
Shastri Bhawan Annexe,
Chennai 600 006.

...Respondent

Criminal Original Petition filed under Section 482,
Cr.P.C. to call for the records in C.C.No.5181 of 2016 on the
file of IV Metropolitan Magistrate, Saidapet, Chennai and quash
all further proceedings against the petitioners.

For petitioner : Mr.P.Ramesh Kumar

For Respondent : M/s.S.Meenakumari
CGSC

O R D E R

The Drug Inspector has initiated a prosecution in
C.C.No.5181 of 2016 against the petitioners herein before the
IV Metropolitan Magistrate, Saidapet, Chennai, for the offence
under Section 32 of the Drugs and Cosmetics Act, 1940, for the
contravention of Section 18(a)(i) and 27(d) of the Act,
challenging which the petitioners are before this Court.

2.The petitioners are the manufacturers of a drug by name
Clopidogrel Tablets IP 75 mg, which is a drug within the
meaning of Drugs and Cosmetics Act, 1940 and it is prescribed
for persons, who have high cholesterol. The Drug Inspector
lifted samples of the said drug on 15.04.2015 and sent the
same to the Government Analyst Central Drug Testing
Laboratory, Chennai for analysis. The Analyst report dated
28.10.2015, shows as under:

"THE SAMPLE RECEIVED DOES NOT CONFORM TO IP STANDARDS
WITH RESPECT TO TEST FOR DISSOLUTION."

After issuing the show cause notice, the present prosecution
has been lodged.

3.Mr.P.Ramesh Kumar, learned counsel for the accused
submitted that the test report does not conform to the
standards of violation prescribed under the Act and Rules. He

drew the attention of this Court to Section 16 of the Act read with necessary entry in the II Schedule. He submitted that as per the II Schedule, the drug should be tested for identity, purity and strength, "dissolution" does not fall within any of the above three. He also submitted that the summons in this case was served on the accused only after the expiry of the shelf life. He further contended that the accused Nos.6 and 7 were only non executive independent directors and ought not to have been arrayed as accused in this prosecution.

4.Per contra, M/s.Meenakumari, learned Central Government Standing Counsel for the respondent refuted the contentions.

5.On the directions from this Court, Mr.V.Sooraj, Drugs Inspector is present.

6.Since these are disputed questions of fact, which can be gone into only by the trial Court, this Court does not want to give any finding as to whether the expression "Dissolution" would fall within the meaning of identity, purity and strength. Since disputed question of fact cannot be gone into in a quash application, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court.

7.As regards the prosecution against accused A6 and A7, the learned counsel produced the extract of Form DIR-12 from the website of the ROC, which clearly shows that A6 and A7 are non executive independent directors. Hence, the prosecution as against A6 and A7 are hereby quashed.

8.As regards A2 to A5, they are directed to appear before the trial Court within a period of four weeks from the date of receipt of a copy of this order. On their appearance, they shall file a petition under Section 436(1) Cr.PC, for bail and the trial Court shall release them on bail on the same day, on each of them executing a bond for Rs.10,000/- with one surety each to the satisfaction of the Magistrate. Thereafter, they shall appear before the trial Court for receiving the complaint, for framing of charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, they shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR

against him under Section 229-A IPC.

However, as regards accused A1 is concerned, the accused shall appoint a person to represent A1 under Section 305 Cr.P.C. who shall be present on all the hearings. The criminal original petition is disposed of accordingly. The connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Drugs Inspector,
Office of the Deputy Drugs Controller (India),
Central Drugs Standard Control Organisation,
South Zone, 2nd Floor,
Shastri Bhawan Annexe,
Chennai 600 006.

2.The IV Metropolitan Magistrate,
Saidapet, Chennai.

+1c to M/s.S.Meenakumari, Advocate Sr.No.28823

+1cc to Mr.P.Rameshkumar, Advocate SR.No.29344

sm:9.4.2018

Cr1.O.P. No.10361 of 2018

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