

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3564 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/A1 and A2 seek to quash the proceedings in C.C.No.547 of 2004 on the file of II Additional Munsif Magistrate, Tirupati registered for the offences under Section 18(a)(i) r/w 17(B)(e); 18(a)(i) r/w 16(a); 18(a) (vi) r/w Rule 65 (5)(3)(1) and 18B of Drugs and Cosmetics Act, 1940 (for short “the Act”) .

2a) Brief facts of the case are that 1st petitioner is the partnership firm— M/s.Ganesh Medical Agency and 2nd petitioner is the Managing Partner. While-so, on 23.12.1998, the Drugs Inspector, Tirupati (complainant) along with two other Inspectors of Vijayawada and Machilipatnam inspected the premises of petitioners situated at D.No.10/15/1A, K.K.Layout, Tirupati and found 1055x5x1 ml. of Sintocinon injection, B.No.80513G manufactured by German Remedies Ltd., Ponda, Goa and 985x5x1ml of Methergion injuncion Batch No.80757K manufactured by M/s.Korteum Pharmaceutical Private Limited, Shirgoan and on suspicion taken samples and sent for analysis and informed the said seizure to the II Additional Munsif Magistrate, Tirupati as per the procedure laid down under Section 23 of the Act.

b) The complainant received Analytical Report dated 25.05.1999 from the Director, Central Drugs Laboratory, Calcutta as per which, Methergion Injection Batch No.80757K manufactured by M/s.Korteum Pharmaceuticals (P) Limited, Thane is not of standard quality for the reason it does not

conform I.P. with respect to identification and the same is considered spurious under the Act. Similarly, he received a report on 19.07.1999 wherein it was informed that Syntocinon injection B.No.80513G manufactured by German Remedies, Mumbai was not standard quality for the reason it does not comply with respect to the Assay and PH.

c) On 10.06.1999, complainant addressed a letter to the petitioners requesting to disclose the name, address and other particulars of the person from whom they acquired the said seized drugs and also sent notice to M/s.Ganesh Medical Agencies, Tirupati directing to furnish the source of acquisition of said drugs. Thereafter, lot of correspondence took place between the complainant and petitioner in which, the complainant requested M/s.Ganesh Medical Agencies to disclose the source of acquisition of drugs and to produce the original documents and found the petitioners stocked, sold and distributed the subject drugs which are not of standard quality (spurious) and thus violated Section 18(a)(i) r/w 17(B)(e); stocking of not standard quality of drugs thus violated Section 18(a)(i) r/w 16(a); violated Section 18(a) (vi) r/w 65(5)(3)(1) for non-production of purchase bills and violated Section 18B punishable under Section 27(c), 27 (d) and 28(A) of the Act.

3) Heard arguments of Sri P.Ananda Seshu, learned counsel for petitioners and learned Additional Public Prosecutor (AP) for respondents.

4) Severely fulminating the complaint averments, learned counsel for petitioners argued that petitioners holding licence in Form 20B and 21B for stocking and selling the drugs in wholesale and admittedly the manufactures

of subject drugs i.e. Sintocinon injection Batch No.80513G is German Remedies, Mumbai and Methergion Injection Batch No.80757K manufactured by M/s.Korteum Pharmaceuticals (P) Limited, Thane. Learned counsel would submit that petitioners have absolutely no knowledge that the subject drugs supplied to them by Novartis (India) Limited under invoices dated 25.07.1998 and 24.08.1998 are of sub-standard quality and the petitioners acquired the said drugs in usual course of business from Novartis (India) Limited under two invoices which are enclosed to the compliant. Since the petitioners are neither manufacturers nor licensee nor agents of the subject drugs, they have nothing to do with the quality of those drugs. The petitioners only purchased the subject drugs under valid bills from Novartis (India) Limited under a bona fide belief that subject drugs do not offend any provision of law. He also submitted that it is not the allegation in the complaint that petitioners are the agents of manufactures for distribution of drugs. The petitioners, on being demanded by the complainant produced purchase Bill No.812780 dated 25.07.1998 and purchase Bill No. 813214 dated 24.08.1998 issued by Novartis (India) Limited, Plot No.9/A, Ground Floor, Engineers Colony, Yusufguda, Hyderabad for sale of the said batch numbers and subject drugs to the 1st petitioner. Those bills would manifest that petitioners acquired those drugs from Novartis (India) Limited. In spite of producing the purchase bills showing the source of acquisition of subject drugs, complainant without reference to those purchase bills and without making any enquiry and investigation filed the complaint against the petitioners which is illegal and unwarranted. Since the purchase bills would clearly show that petitioners are

only retailers who after acquiring the subject drugs from Novartis (India) Limited sold the same to the Omkar Medicals, Vijayawada and M/s.Bharathi Medical Distributors, Vijayawada under valid bills and invoices. The petitioners had absolutely no knowledge about the quality or standard of the subject drugs and therefore they are not liable for criminal prosecution. Learned counsel relied upon the unreported judgment in *Y.Satyanarayana vs. The Drugs Inspector, Vijayawada*¹. He thus prayed to allow the Criminal Petition and quash the proceedings.

5) Per contra, learned Additional Public Prosecutor opposed the petition on the submission that when the Drugs Inspector, Tirupati basing on the purchase bills submitted by the petitioners enquired with M/s.Korteum Pharmaceuticals (P) Limited, Thane, they on verifying the samples and other particulars found certain differences. Therefore, whether the petitioners purchased the said drugs from Novartis (India) Limited, Mumbai under valid invoices and purchase bills is a doubtful fact and that was why the complainant filed the complaint against the petitioners for non-production of purchase bills among other offences. He thus prayed to dismiss the petition.

6) The point for consideration is:

“Whether are merits in this Criminal Petition to allow?”

7) **POINT**: Petitioners’ case is that they are only retailers but not manufacturers or agents for distribution. They purchased the subject drugs from Novartis (India) Limited under two purchase bills and they submitted the

¹ CrI.P.Nos.5920 of 1999 and batch dt.31.10.2000

bills, but without reference to those bills the complainant filed the complaint. On the other hand, the contention of learned Additional Public Prosecutor is that with reference to the purchase bills, when the Drugs Inspector enquired M/s.Korteum Pharmaceuticals (P) Limited, the said concern on enquiry found some differences between the sample furnished by the Drugs Inspector and the original sample of the same batch and hence it is doubtful whether the petitioners purchased subject drugs from Novartis (India) Limited.

8) In the light of above submissions, when the materials filed along with the petition are perused, the Drugs Inspector addressed a letter in Rc.No.536/DI/TPT/S.Z./98 dated 08.01.1999 requesting the petitioners to furnish the records and registers showing from whom they acquired the subject drugs. Then, copy of the undated letter said to be addressed by the petitioners to the Drugs Inspector shows that purchase bills were enclosed to the said letter. The copy of the purchase Bill No.813214 dated 24.08.1998 shows that Methergin injection Batch No.80757K was supplied by Novartis (India) Limited. Similarly, purchase Bill No.812780 dated 25.07.1998 shows that Sintocinon injection Batch No.80513G was supplied by Novartis (India) Limited. Thus, according to the petitioners, they purchased the subject drugs from Novartis (India) Limited as dealers and sold to Omkar medicals, Vijayawada and M/s.Bharathi Medicals, Vijayawada.

9) A perusal of the complaint shows that the complainant has not made any reference about these two purchase bills. However, in para-17 of the complaint it is mentioned that when he contacted M/s.Korteum Pharmaceuticals (P) Limited, Thane and M/s.Novartis (India) Limited,

Mumbai it appears they found some different signatures and other differences on the sample batch produced by the Drugs Inspector and the original sample of the same batch available with them. Therefore, it appears there is a doubt as to whether the purchase bills produced by the petitioners are relating to the same samples which were taken from the shop by the complainant and the same sample batch which were available with the manufacturer. Since the petitioners are claiming exemption from criminal prosecution, it is their duty to produce cogent material before the Court to show that they have acquired the subject drugs from the manufacturer or his agent or distributor. Since that aspect is not clarified, at this stage, it is not apposite to quash the proceedings. The petitioners are given liberty to vindicate their defence during trial.

10) In the result, this Criminal Petition is dismissed giving liberty to the petitioners to face trial and vindicate their defence before the trial Court.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 11.09.2018
Murthy

U. DURGA PRASAD RAO, J