

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5222 of 2013

ORDER:

The present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioners - accused Nos.2 and 3 seeking to quash the proceedings in Calendar Case No.66 of 2008 pending on the file of the learned Additional Judicial Magistrate of First Class, Vizianagaram, registered for the offence under Section 18 (a) (i) of the Drugs and Cosmetics Act, 1940 (for short 'Act, 1940') punishable under Section 27 (d) of the Act, 1940.

2. Heard the counsel for the petitioners and the learned Public Prosecutor appearing for the respondent.

3. The case of the prosecution is that on 08.03.2006, the Drugs Inspector during his routine course picked up a sample of Aeronac - Aee Tablets Batch No.517, Mft.date 11/05, Exp.date: 10/07 manufactured by M/s. Lessae Research Laboratories, Pondicherry, from the sale premises of M/s. Lakshmi Raj Pharmaceuticals, Vizianagara and sent it to the Government Analyst, Drugs Control Laboratory, Hyderabad for test/analysis. On 25.06.2007, a test report was received and the sample was declared as Not of Standard Quality

as the same does not meet the labelled claim in respect of Serratiopeptidase content.

4. The learned counsel for the petitioners submits that the manufacturing date of drug was November, 2005 and expiry date was October, 2007, whereas complaint was filed on 12.10.2007, by which date, the right of petitioners to send second sample for analyst is lost. He also submits that the other accused viz., accused Nos.4 and 5 filed Criminal Petition No.9107 of 2009 before this Court, and by virtue of the orders, dated 02.08.2012, this Court quashed the proceedings against them. The observation made by a learned Single Judge of this Court in Criminal Petition No.9107 of 2009, are as under:

“2. The allegations in the charge sheet show that one P.Padmavathi, w/o. Subbaiah is Proprietrix of A.4 firm and A.5 is the authorized signatory and competent person and responsible for the day to day affairs of A.4 firm, who purchased the subject drug from A.3. On 08.03.2006, Drugs Inspector, Anakapalli (L.W.1) picked up a sample of Aeronac-Aee Tablets Batch No.517, Mfg. date 11/05, Exp.Date: 10/07 manufactured by M/s. Lessae Research Laboratories, Pandicherry, from the sale premises of M/s. Lakshmi Raj Pharmaceuticals, Vizianagaram, and sent the sample to the Government Analyst, Drugs Control Laboratory, Hyderabad. On 25.6.2007, a test report was received and the sample was declared as Not of Standard Quality as the same does not meet the labeled claim in respect of Serratiopeptidase content. Owner of

M/s.Lakshmi Raj Pharmaceuticals, Vizianagaram informed that the said drug was purchased from A.4 as per Sale Invoice No.CRL 0156, dated 09.02.2006. On a letter sent by the Drug Inspector, A.5 for A.4, gave reply dated 28.6.2007 stating that they purchased the subject drug from A.3 in four lots vide Invoice Nos. STN Nos. 5697, 5744, 5792 and 0025, dated 20.01.2006, 15.02.2006, 15.03.2006 and 19.04.2006 respectively. After completion of requisite formalities, the charge sheet was filed.

3. The petitioners contend herein that A.4 is a retail seller and had no role in the manufacture or distribution of the drugs in question and the accused Nos.4 and 5 are entitled to protection under Section 19 (3) of the Act under a plea of warranty. The petitioners also contend that the drug in question had its expiry date in October, 2007 and the complaint was filed on 12.10.2007, thereby depriving the accused Nos.5 and 6 of their right under sub sections 3 and 4 of Section 25 of the Act. Consequently they sought for quashing of proceedings against them.

4. The petitioners relied on a decision of this Court in CrI.P.No.109 of 2008 dated 11.02.2008 wherein the learned Judge found a dealer to have sold the product in question which was in sealed containers and the learned Judge referred to the protection given by sub section 3 of Section 30 of the Insecticides Act, 1968, under such circumstances for a person who is neither an importer nor a manufacturer and who cannot have the knowledge of the contents of the containers being substandard or misbranded. The learned Judge found that when the seals of the containers were intact and were not tampered with and when the retailer did not meddle with the contents of

the containers, any criminal proceedings against such retail seller are not sustainable. The same principle can be extended to the petitioners herein due to an identical protection given under Section 19 (3) of the Act.

5. The petitioners also relied on another decision of this Court in CrI.P.No.2997 of 2001 dated 27.08.2001 wherein the learned Judge was dealing with a case under the Drugs and Cosmetics Act, 1940, and found that the sellers of the drug having no knowledge of the substandard quality of the drug were entitled to have the proceedings against them quashed. Further, valuable right of the petitioners had been denied as they cannot make any request to send the second sample to another laboratory as drugs in question already expired.

6. Therefore, the petitioners, on the facts as stated in the charge sheet, are entitled to the benefit of the protection under Section 19 (3) of the Act and the further proceedings against them should therefore, fail.

7. Accordingly, the criminal petition is allowed and the further proceedings against the petitioners in C.C.No.66 of 2008 on the file of the Additional Judicial First Class Magistrate, Vizianagaram, are quashed against the petitioners. CrI.M.Ps. pending, if any, in the Criminal Petition shall stand dismissed.”

5. Considering the fact that these petitioners also stand on the same footing as that of accused Nos.4 and 5, the proceedings against them are liable to be quashed.

6. Accordingly, the present Criminal Petition is allowed and the further proceedings in the proceedings in Calendar Case No.66 of 2008 pending on the file of the learned Additional Judicial Magistrate of First Class, Vizianagaram, against the petitioners, who are Accused Nos.2 and 3, are hereby quashed.

As a sequel, the miscellaneous petitions, if any, pending in the present Criminal Petition, stand closed.

December 14, 2018
Mgr

T. RAJANI, J

