

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.9511 of 2013

ORDER:

The present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioners - accused Nos.1 to 6 seeking to quash the proceedings in Calendar Case No.569 of 2012 pending on the file of the learned Chief Metropolitan Magistrate, Vijayawada, registered for the offences under Sections 18 (a) (i) and 16 read with the Second Schedule 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 05.09.2007, the Drugs Inspector during his routine course inspected M/s. Sri Sai Durga Medical Corporation, Kotamaji Street, Vijayawada, and took a sample of drug manufactured by petitioner No.2 company and sent one sealed portion of the sealed sample lifted, to the Government Analyst, Drugs Control Laboratory, Hyderabad for test/analysis. The report, dated 27.12.2007 was received and on 08.05.2008 a notice was issued to the accused.

4. The learned counsel for the petitioners submits that the manufacturing date of drug was June, 2006 and expiry date was May, 2008, whereas complaint was filed on 26.02.2010 and cognizance was taken by the learned Magistrate on 21.07.2012, by which date, the right of petitioners to send second sample for analyst is lost. He also expressed that there is prejudice caused to the petitioners, by virtue of the delay caused in filing the report and issuing statutory notice, as the opportunity provided under Section 25 (3) of the Act, 1940 to send a sample for second analysis is lost.

5. There can be no disagreement with the opinion that the quality of the sample sent by the complainant and the quality of the sample sought to be sent by the accused for second opinion should not vary. That would be possible only when much time is not lost between the period of sending the first sample and the second sample. Such valuable right offered to the accused under Section 25 (3) and (4) of the Act, 1940 would get defeated if it is otherwise. The delay in the complaint would result in the two dates getting distanced thereby rendering the exercise of sending any sample for second opinion futile, more so, in the present case the complaint is filed after expiry of the drug.

6. There is no denial of the dates submitted by the petitioners herein. In view of the above, there would not be any purpose served by permitting the prosecution to proceed with the case and it would result in abuse of process of law.

7. The decision of the Supreme Court in **State of Haryana v. Unique Farmaid (P) Ltd.**¹, which was a case under the Insecticides Act, which has provisions analogous to Sections 25 (3) and (4) of the Drugs and Cosmetics Act, found that an important right given to the accused had been rendered ineffective on which the proceedings could be quashed. The contention therein that in the absence of the statutory time limit the shelf life of the sample was not relevant, was rejected. The Supreme Court observed at paragraph Nos.11 and 12 as follows:

“11. Sub-section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is

¹ (1999) 8 SCC 190

not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer *res integra*. In *State of Punjab v. National Organic Chemical Industries Ltd.* [(1996) 11 SCC 613] this Court in somewhat similar circumstances said that the procedure laid down under Section 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana v. Brij Lal Mittal* [(1998) 5 SCC 343] under the Drugs and Cosmetics Act, 1940; *Municipal Corporation of Delhi v. Ghisa Ram* [AIR 1967 SC 970]; *Chetumal v. State of Madhya Pradesh & Anr.* [(1981) 3 SCC 72] and *Calcutta Municipal Corporation v. Pawan Kumar Saraf* [(1999) 2 SCC 400] all under the Prevention of Food Adulteration Act, 1954.

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub- section (4) of Section 24 of the Act.

Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.”

8. In the light of the above legal position and also the reasons mentioned by this Court in the aforementioned paragraphs, the present Criminal Petition is allowed and the further proceedings in Calendar Case No.569 of 2012 pending on the file of the learned Chief Metropolitan Magistrate, Vijayawada, against the petitioners, who are Accused Nos.1 to 6, are hereby quashed.

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

T. RAJANI, J

December 14, 2018
Mgr

