

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.9760 OF 2011

ORDER:

This Criminal Petition, under section 482 of Cr.P.C., is filed by the Petitioners/A-1 and A-2 seeking to quash the proceedings in C.C. No.270 of 2004, pending on the file of the Court of IV Metropolitan Magistrate at Bheemunipatnam, Visakhapatnam District (for short, 'the trial Court'), registered for the offences punishable under Section 18(a)(i) R/w. Section 16, punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act').

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, appearing for the 1st respondent - State. None appears for the 2nd respondent – complainant, in spite of service of notice.

3. The facts of the case are that, on 17.12.2001, L.W.1 visited the premises of the petitioners and collected samples of the drugs, which were being sold in the said premises, and they were sent to the Government Analyst, Drug Control Laboratories, Hyderabad, for analysis on 17.12.2001, but the report was received on 18.05.2002 and the complaint was filed on 31.12.2003.

4. Learned counsel for the petitioners submits that the date of expiry of the drug is 01.10.2002. He submits that by virtue of the said delay in receiving the analyst report and filing the complaint, the valuable right available to the petitioners under Section 25(3) of the Act is lost.

Section 25(3) of the Act reads as follows:

“(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless

the person from whom the sample was taken ³[or the person whose name, address and other particulars have been disclosed under Section 18A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.”

5. This Court, in ***R. Hari Hara Reddy Vs. State of Andhra Pradesh***¹, held that the inordinate delay in filing the complaint would deprive the valuable right offered on the accused under Section 13(2) of the Prevention of Food Adulteration Act, 1955. Because of the violation of the mandatory requirement, in the instant case, under Section 25(3) of the Act, no purpose would be served by continuing the prosecution against the petitioners.

6. The decision of the Supreme Court in ***State of Haryana Vs. Unique Farmaid (P) Limited***² is also on the same lines. The contention therein that in the absence of the statutory time limit the shelf life of the sample was not relevant, was rejected. Relevant portion at paragraphs 11 and 12 observed 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 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

¹ 2017(2) ALD (Crl.) 662

² (1999) 8 SCC 190

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.”

7. In the light of the above legal position and also the reasons mentioned hereinabove, the Criminal Petition is allowed and all further proceedings against the Petitioners/A-1 and A-2, in C.C. No.270 of 2004 on the file of the Court of IV Metropolitan Magistrate at Bheemunipatnam, Visakhapatnam District, are hereby quashed.

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

Date: 26.09.2018.
Dsh

T. RAJANI, J



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Date. 26.09.2018

DSH