

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**CRIMINAL PETITION No.5175 OF 2017**

**ORDER:**

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners-A.1 and A.2 seeking to quash the order dated 15.03.2017 in Criminal Revision Petition No.7 of 2017 on the file of the XVI Additional District & Sessions Judge, Krishna at Nandigama (for short, 'the learned Sessions Judge').

2. Heard Smt. Sesha Rajyam, learned senior counsel appearing for petitioners, Sri Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh appearing for respondent No.1-State and perused the record.

3. Learned senior counsel appearing for the petitioners would submit that as per the estimation of the authorities, worth of the seized drugs is Rs.24,67,764/-; that the identity and the ownership of the drugs are not in dispute; that the petitioners are ready to furnish adequate security for release of the drugs pending trial; that when an application was filed before the learned Magistrate in CrI.M.P. No.3841 of 2016 for release of the drugs seized, the same was dismissed, and when the matter was carried by way of revision before the learned Sessions Judge, the same was also dismissed vide the impugned order; that the validity of the drugs is likely to expire in the year 2019; that there is no possibility of concluding the trial in the case by the end of this year; that both the courts below erred in dismissing the applications and in not handing over interim custody of the seized drugs. In support of her contention, she relied on a decision in *Sunderbhai Ambalal Desai v.*

*State of Gujarat*<sup>1</sup>, and ultimately prayed to release the seized drugs for interim custody of the petitioners pending trial of the case.

4. On the other hand, the learned Public Prosecutor would submit that the drugs in question were manufactured without license; the same were seized under cover of panchanama by the complainant-Drugs Inspector by following necessary formalities; that though the validity of the drugs is likely to expire in 2019, it is not appropriate to release the drugs to the interim custody of the petitioners. He relied on a decision of the Hon'ble Apex Court dated 26.02.2010 in Criminal Appeal No.450 of 2010 in *State of Andhra Pradesh v. M/s. Zyden Gentec Ltd*<sup>2</sup> and would contend that the Hon'ble Apex Court considered the decision relied on by the learned senior counsel appearing for the petitioners in *Sunderbhai Ambalal Desai* case (1 supra) in the order and declined to grant interim custody of the drugs stating that the drugs were manufactured without license, and ultimately, prayed to dismiss the Criminal Petition.

5. In view of the contentions put forth by both sides, the point for determination is whether the request of the petitioners-A.1 and A.2 for release of the seized drugs can be acceded to ?

6. Case of the prosecution is that on 12.07.2016, the complainant-Drugs Inspector (Manufacturers), Vijayawada inspected the premises belonging to petitioner-A.1 company and seized the drugs in question after following the procedure established. The same were produced before the

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<sup>1</sup> (2002) 10 Supreme Court Cases 283

<sup>2</sup> Hon'ble Apex Court dated 26.02.2010 in Criminal Appeal No.450 of 2010

court concerned. On the request of the Drugs Inspector, the Court gave custody of the drugs to him and the same are now in the custody of the Drugs Inspector, Vijayawada. When the petitioners-A.1 and A.2 filed Crl.M.P. No.3841 of 2016 in C.F. No. 4907 of 2016 in P.R.C. No. 12 of 2006 before the learned Judicial Magistrate of First Class, Jaggaiahpet, the said petition was dismissed by the learned Magistrate. Challenging the same, the petitioners-A.1 and A.2 preferred revision before the learned Sessions Judge, who dismissed it vide the impugned order.

7. As per the case of prosecution, the seized drugs were manufactured in a place where there is no permission to manufacture the same. The contention of the learned senior counsel appearing for the petitioners is that the petitioners have license to manufacture the drugs. As per record placed before the Court, the drugs were not manufactured at a licensed place, and the petitioners have no license to manufacture the drugs at that place. No doubt, the drugs are perishable. The drugs are entrusted to the Drugs Inspector for safe custody till conclusion of the trial. As per the records, the seized drugs are properly preserved with the Drugs Inspector.

8. In the decision relied on by the learned Public Prosecutor in *M/s. Zyden Gentec Ltd* case (2 supra), while dealing with the interim custody of the drugs, the Hon'ble Apex Court held, having come to conclusion, that license is required to manufacture the drug viz. G.G.Ether, the learned single Judge was not justified in directing release of the seized material, subject to its examination by two agencies. It is further observed that the proposition laid down in decision in *Sunderbhai Ambalal Desai* case (1

supra), on which reliance was placed by the learned Judicial Magistrate of First Class and which appears to be foundation of the direction relating to exercise of power by the court concerned under Section 451 Cr.P.C., cannot be relied upon in ordering release of drugs manufactured without an appropriate license.

9. In view of the mandate given by the Hon'ble Apex Court in *M/s. Zyden Gentec Ltd* case (2 supra), it is not appropriate to grant interim custody of the drugs manufactured without an appropriate license. In the circumstances of the case, it can also be concluded that the drugs seized were manufactured without license. The decision relied upon by the learned senior counsel appearing for the petitioners has no application to the instant case. Both the Courts below have given number of reasons in declining the request made by the petitioners-A.1 and A.2. There is no infirmity in both the orders and there are no grounds to warrant interference with the said orders. The Criminal Petition is devoid of merit and is liable to be dismissed.

10. However, as the matter relates to the drugs which are likely to expire in 2019, the trial Court shall expedite the trial and dispose of the case within a period of six (6) months from today. Registry is directed to communicate copy of this order within seven (7) days from today.

11. With the above observation, the Criminal Petition is dismissed.

Miscellaneous Petitions pending, if any, in the Criminal Petition shall stand closed.

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**DR.SHAMEEM AKTHER, J**

**DATED: 12 .2.2018**  
DRK



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**12.2.2018**

**DRK**