

SMT JUSTICE T.RAJANI

CRIMINAL PETITION Nos.11345 of 2011 and 146 of 2013

COMMON ORDER:

These petitions are filed seeking for quash of the proceedings against the petitioners, who are A5 to A7 and A4 respectively, in C.C.No.827 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam. The offences alleged are under Sections 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act (for short 'the Act').

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 1st respondent.

3. The case of the prosecution is that on 19.09.2006, the Drugs Inspector picked up sample of Ampclox capsules, Batch No.AMC0501 with Mfg. date 2/3006 and Exp. date 1/2008 from M/s. Sai Raghavendra Medicals and one sealed portion of the sample was sent to Government Analyst, Drugs Control Laboratory, Hyderabad for test/analysis dated 20.09.2006. The report of the analyst was received on 06.06.2007 and notice under Section 18-B of the Act was issued to A1 on 11.09.2007. A1 paid the amount for second sampling as per Section 25(4) of the Act but it was informed that the test cannot be carried out on the sampled as the shelf life of the sampled drug expired. The charge sheet was filed on 05.08.2009, which is after the expiry of the drug.

4. The counsel for the petitioners expressed that there is prejudice caused to the petitioners by virtue of the delay caused in filing the report and issuing statutory notice, the opportunity provided under Sections 25 (4) of the Act to send a sample for second analysis is lost. The grievance of the petitioners is that the 2nd sample, which was sent to the FSL, could not be analyzed as the sample has already expired by the date of receipt of the same by the FSL. The said provision reads as under:

25. Reports of Government Analysts.-

...

...

...

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused; cause the sample of the drug (or cosmetic produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report or writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

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 (4) of the Act 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 that were submitted by the petitioner 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 paragraphs 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

¹ (1999) 8 SCC 190

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 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.”

In the light of the above legal position and also the reasons mentioned by this Court in the aforementioned paragraphs, the criminal petitions are allowed and the further proceedings in C.C.No.827 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam, against the petitioners, who are A5 to A7 and A4 respectively, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE T. RAJANI

October 23, 2018
LMV