

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2018

PRONOUNCED ON : 04.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P. [MD] No. 305 of 2011

1. M/s. Healthy Life Pharma Private Limited,
represented by its Director, Mr.Manu Shah.
2. Manu Shah
3. Ratanshi Shah
4. Kirti Shah ..Petitioners/Accused Nos-1 to 4

-Vs-

State represented by
Drugs Inspector,
Chengalpattu Range,
at Kancheepuram.

..Respondent/Complainant

PRAYER :- This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records in C.C. No. 42 of 2010, on the file of the Learned Chief Judicial Magistrate, Chengalpattu and quash all further proceedings against the accused.

For Petitioners: Mr.P. Ramesh Kumar

For Respondent : Mr.T. Shanmuga Rajeswaran
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition is filed by the petitioners challenging the complaint filed by the respondent in C.C.No.42 2010 on the file of the Chief Judicial Magistrate, Chengalpattu.

2. The case of the complainant is that the respondent / Drugs Inspector, Chengalpattu Range, drew a sample of Ferrous Sulphate and Folic Acid tablets from the premises of Primary Health Centre, Medavakkam and a portion of the sample was sent

for analysis to the Government Analyst (Drugs), Drug Testing Laboratory, Chennai. The said Drug Testing Laboratory, by their certificate of analysis dated 08.04.2009, reported that the subject sample is not of standard quality and it does not conform to label claim with respect to the content of Folic Acid, which is only 68%, instead of 90%. The Tamil Nadu Medical Services Corporation disclosed the purchase and stock details of the above said Drug vide their letter dated 31.07.2009 that the drug was supplied in quantity of 7,20,000 tablets by the first petitioner Company on 05.06.2008 and 20.06.2008. A show cause memo was issued on 10.08.2009, for which, the first petitioner company replied that they do not agree with the Government Analyst report. Since their explanation was not satisfactory, after obtaining necessary sanction for prosecution from the Director of Drugs, the present complaint has been filed for the violations of Section 18(a)(i) r/w 27(d) and 18(B) of Drugs and Cosmetics Act, 1940 for having manufactured and sold a Not of standard quality drug.

3. Learned Counsel for the petitioners submitted that the petitioners 3 & 4 have resigned from the Directorship of the first petitioner Company as early as on 18.06.2005 and therefore, the complaint as against petitioners 3 & 4 is to be quashed. Insofar as the other petitioners are concerned, the learned Counsel has raised the following grounds:

- there is a delay in subjecting the samples for analysis. Though the sample was drawn on 23.10.2008, it was tested only on 08.04.2009, i.e., after six months. Moreover, without disclosing the condition in which they were stored, the present complaint has been filed; and
- though the analyst report was obtained on 08.04.2009, the complaint was filed only in the year 2010 and within that period, the expiry date of the product, i.e., April, 2010, was over and therefore, the petitioner was deprived of his right guaranteed under Section 25(4) of the Act.

4. Heard the learned Counsel on either side and perused the documents placed on record.

5. In support of the first contention with regard to petitioners 3 & 4, the petitioners have relied upon the Form 32 filed before the Registrar of Companies and also the order dated 30.08.2017 passed by this Court in CrI.O.P.No.25780 of 2010, wherein, in a similar complaint instituted by the Drugs Inspector, Salem Range, as against the petitioners 3 & 4 herein in C.C.No.107 of 2010 on the file of Judicial Magistrate No.2, Sankagiri, this Court has quashed the proceedings by relying upon the Form 32 filed on 07.07.2005. Perusal of the Form 32 produced before this Court would disclose that the petitioners 3 & 4 have resigned from the first petitioner Company on

18.06.2005. The samples in question, which were taken by the complainant on 23.10.2008, were manufactured in May, 2008. Under the above circumstances, the complaint as against the petitioners 3 & 4 are hereby quashed.

6. Insofar as the other accused are concerned, their first ground is that without disclosing the condition in which the samples were stored, the prosecution is liable to be quashed. The respondent has stoutly denied the same that the respondent's Laboratory controlled by the Government Analyst at Chennai had all the required arrangement for the storage of the drugs and therefore, the subject drug was also stored in required storage condition. With regard to the another ground that the petitioners were deprived of their right as per Section 25(4) of the Act, the learned Government Advocate contended that as per this Section, the petitioners have a right to have their samples analyzed by the Central Drugs Laboratory, which is the conclusive evidence of facts. Here, in the present case, the portion of the drawn sample was also sent for testing by the trial Court to the Central Drugs Laboratory on 02.03.2010 and the same was tested between 12.04.2010 and 30.04.2010, ie., before its expiry (04/2010) and the report of the Central Drugs Laboratory dated 05.05.2010 was placed before the trial Court. According to the respondent, the report of the Central Drugs Laboratory dated 05.05.2010 also reveals that the drug is not of standard quality and it does not conform to claim with respect to "Assay", ie., content of Folic Acid only.

7. Under such circumstances, this Court is not inclined to quash the complaint in limini. A prima facie case has been made out as against the petitioners 1 & 2, which has to be tested only during the trial and therefore, with a liberty to the petitioners 1 & 2 to raise all their grounds before the trial Court, this Criminal Original Petition stands dismissed as against petitioners 1 & 2.

8. In fine, this Criminal Original Petition is partly allowed, by quashing the proceedings pending as against petitioners 3 & 4 in C.C.No.42 of 2010 on the file of the Chief Judicial Magistrate, Chengalpattu.

gk

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Chengalpattu.
2. The Drugs Inspector,
Chengalpattu Range,
at Kancheepuram.
3. The Public Prosecutor,
High Court,
Madras.

CRL. O.P[MD] No. 305 of 2011

Kak(24/05/2019)



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