

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.No. 309 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,
Salem - II Range,
O/o. The Assistant Director of Drugs Control,
Salem Zone,
O.7, Thiruvalluvar Street,
Subramaniya Nagar, Salem - 5. ..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. 192 of 2010, on the file of the Learned Judicial Magistrate No.1, Attur 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.192 2010 on the file of the Judicial Magistrate No.1, Attur.

2. The case of the complainant is that the respondent / Drugs Inspector, Salem - II Range, on 19.01.2009, drew a sample of Carbimazole Tablets from the premises of Government Hospital, Attur, Salem 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 30.09.2009, reported that the subject sample is not of standard quality. The Tamil Nadu Medical Services Corporation disclosed the purchase and stock details of the above said Drug vide their letter dated 10.12.2009 that the drug was supplied by the first petitioner Company in a total quantity of 1,95,000 tablets. Thereafter, a show cause memo was issued on 11.12.2009, 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 19.01.2009, it was tested only on 30.09.2009, ie., after eight 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 30.09.2009, the complaint was filed only on 06.07.2010 and within that period, the expiry date of the product, ie., February, 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 19.01.2009, were manufactured in March, 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 would submit that though a show cause notice dated 11.12.2009 and a remainder notice dated 20.01.2010 was issued to the petitioner, no reply was forthcoming and therefore, they submitted a proposal letter dated 27.01.2010 for prosecution before the Director of Drugs Control. Meanwhile, a reply letter dated 19.12.2009 was received belatedly from the petitioner, after requesting sanction order for prosecution. However, as the reply was not satisfactory, they proceeded with the matter and after getting sanction from the Director of Drugs Control, the complaint was filed.

7. This submission of the learned Government Advocate does not hold much water. This is because, the samples were manufactured in March, 2008, having its expiry in February, 2010. The private complaint was filed in July, 2010, ie., after the expiry of the life of the drugs. There is no specific mandate that the complaint under the Drugs and Cosmetics Act should be filed only with the reply of the manufacturer. The manufacturer is having protection under Section 25(4) of the Drugs and Cosmetics Act to establish their defence by having it analyzed by the Central Drugs Laboratory. For better appreciation, Section 25(4) of the Drugs and Cosmetics Act is extracted hereunder:

"25(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 in 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."

8. Admittedly, the petitioners, vide their reply letter dated 19.12.2009 disputed the Government Analyst's report. Though the respondent contended that they have received this reply letter belatedly, there is no materials to substantiate the same. However, had the complaint been filed before the expiry of the drugs, the petitioner would have established their defence, by having their samples analyzed by the Central Drugs Laboratory. Therefore, this Court is of the view that the right of the petitioners to have the samples analyzed by Central Drugs Laboratory under Section 25(4) of the Drugs and Cosmetics Act has been denied and the very purpose of prosecution has been defeated, because of the delay in lodging the complaint, ie., after expiry.

9. In similar circumstances, the Hon'ble Supreme Court in Medicamen Biotech Limited and another v. Rubina Bose, Drug Inspector, reported in (2008) 7 SCC 196, has held that the appellants had lost their rights under Sections 25(3) & 25(4) due to the delay in filing of complaint, ie., after the expiry of the drug and thereby, quashed the proceedings. For better appreciation, the relevant portion is extracted thus:

"19. ...We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right under Sections 25(3) and 25(4) of the Act, which must necessitate the quashing of the proceedings against them."

10. Under the above circumstances, this Court is left with no other option, except to quash the proceedings as against petitioners 1 & 2 also and accordingly, the proceedings pending as against the petitioners in C.C.No.192 of 2010 on the file of the Judicial Magistrate No.1, Attur, is quashed in toto. The Director of Drugs Control, Tamil Nadu, Chennai, is directed to look into this matter and issue necessary directions so that the statutory requirements provided under the Drugs and Cosmetics Act are scrupulously followed. In fine, this Criminal Original Petition is allowed.

gk

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Attur.
2. The Drugs Inspector,
Salem - II Range,
O/o. The Assistant Director of Drugs Control,
Salem Zone,
O.7, Thiruvalluvar Street,
Subramaniya Nagar, Salem - 5.
3. The Public Prosecutor,
High Court,
Madras.

Kak(02/05/2019)

CRL. O.P.No. 309 of 2011



WEB COPY