

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition No.31790 of 2012
and
M.P.Nos.1 and 2 of 2012

1.M/s.Alfred Berg & co.(I) Pvt.Ltd.,
Rep.by its Director, Thiru Kamalesh Jain

2.Kamalesh Jain .. Petitioners
.. Vs ..

The State of Tamil Nadu
Rep. by Drugs Inspector,
Namakkal Range
O/o. The Assistant Director of Drugs Control
Salem Zone. .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the criminal case in C.C.No.89/2012 on the file of learned Judicial Magistrate, Thiruchengode and quash the same.

For Petitioners : Ms.R.Anitha

For Respondent : Mr.R.Ravichandran, Govt.Advocate
[Criminal Side]

ORDER

The respondent is the complainant. The Petitioners are the Company and its Director and they are arrayed as accused 1 and 2. The Petitioner Manufacturing company is a Pharmaceutical company involved in manufacturing of drugs. The respondent taken a sample from the petitioner company on 22.02.2011 and they sent it to Laboratory for analysis report. They received the sample report on 25.04.2011 and issued a show cause memo on 26.05.2011 to the petitioner company. On receipt of show cause notice, the petitioners sent reply on 16.06.2011. Subsequently, the respondent filed a complaint before Judicial Magistrate, Tiruchengode, on 17.02.2012. The petitioners received the summons only on June 2012.

2. The learned counsel for the petitioners submits that as per Section 25(4) of the Drugs and Cosmetics Act, 1940, after filing a complaint before the Judicial Magistrate, the court has to send the sample either on its own motion or at

the request of the accused, to Central Drugs Laboratory for further report. Even though the complaint is filed before the expiry of the drugs, summons sent only after expiry of the drugs. Therefore, the petitioner had no occasion to get second report from the Central Drugs Laboratory. Hence, no offence made out and therefore, the complaint in C.C.No.89 of 2012 is to be quashed.

3. The learned Government Advocate [Criminal Side] appearing for the respondent/State would submit that after receiving show cause notice, they filed a complaint within the time and it is for the court to send the drugs for further report, however, whether the drug has been sent or not, is not known to the respondent. Therefore, the complaint in C.C.No.89 of 2012 need not be quashed.

4. Heard the learned counsel for the parties and perused the records carefully.

5. Admittedly, the petitioner company is a Pharmaceutical company. The respondent taken the sample from the petitioner company on 22.02.2011 and the report received from the Laboratory on 25.04.2011. The petitioner received show cause notice on 26.05.2011 and given reply on 16.06.2011. The complaint has been filed by the respondent on 17.02.2012.

6. The contention of the learned counsel for the petitioner is that after expiry date of the drugs, it cannot be sent for further report. The learned counsel, in this regard, placed reliance on the decision reported in (2016) 12 SCC 298 [Northern Minerals Limited and others Vs. Rajasthan Government and another], and submitted that following the said principles of law, the complaint has to be quashed. But the learned counsel is not in a position to say whether the court sent the sample for retesting after receiving the request from the petitioner or the court, suo motu, sent the sample for retesting or not.

7. In the decision reported in (2016) 12 SCC 298 [cited supra], in paragraph 16, it is held as follows:-

"16. It is not disputed before us that on the date when cognizance was taken on 04.02.1995 by the Judicial and Munsif Magistrate (First Class), Ajmer, Rajasthan, the sample had already expired in June 1994; in the above view of the matter, we are satisfied that the instant appeal deserves to be allowed in the same terms as in Northern Minerals Ltd., Vs. Rajasthan Govt. (Criminal Appeal No.1034 of 2005) decided on 28.04.2016."

In the case on hand, the complaint is filed before the expiry date. Therefore, under these circumstances, this court has no hesitation to hold that the decision cited by the learned counsel for the petitioner, is not applicable to the facts of the present case on hand and therefore, the complaint cannot

be quashed. Therefore, this Crl.O.P., is dismissed, with liberty to the petitioners to raise all their defence before the trial court. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Judicial Magistrate No. II,
Tiruchengode.

2.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.S.Ramasamy Law Associates, Advocate, S.R.No. 106095

Crl.O.P.No.31790 of 2012

RR(CO)
GN(10/02/2020)