

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.1582 of 2013

1.M/s.J.B.Chemicals & Pharmaceuticals Ltd.,
Rep. by its Director
Kamalesh Udani

2.Kamalesh Udani

... Petitioners

Vs.

State represented by
Mr.S.K.Arumugam,
Drugs Inspector,
Salem Range i/c
O/o.Asst. Director of Drugs Control
Salem Zone, No.5, Thiruvalluvar Street,
Subramania Nagar, Salem - 5.

... Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in S.T.C.No.1022 of 2008 on the file of the Judicial Magistrate, Omalur and quash the same.

For Petitioner : Mr.M.Sriram

For Respondent : Mr.C.Iyyapparaj

Additional Public Prosecutor

Mr.Sakthivel, Drugs Inspector

ORDER

The petitioners have filed this petition seeking to call for the records in S.T.C.No.1022 of 2008 on the file of the learned Judicial Magistrate, Omalur and to quash the same.

2.The case of the petitioners is that the then Drug Inspector inspected the Government Primary Health Centre, Pugalpatty on 25.10.2006 and picked up certain samples of Metronidazole Tablets B.No.A-5221 having date of manufacture March, 2005 and date of expiry February, 2009 manufactured by the petitioners for test. It was sent for analysis to the Government Analyst (Drugs), Drugs Testing Laboratory, Teynampet, Chennai. On 10.03.2008, almost after 18 months, it was analyzed. The said product cleared all parameters of the test except that it had failed in dissolution test.

3.It is the further case of the petitioners that the respondent has not disclosed the storage condition of the said drug for the said 18 months. The petitioners had supplied the said product to the Tamil Nadu Medical Services Corporation as part of tender sale in Invoice No.05 20500019 dated 14.04.2005 to the Pharmacist, District Drug Ware House, C/o.Tamil Nadu Warehousing Corporation, Warehouse Godown, Salem Steel Plant and the quantity being 1700 and another Invoice No.05 20500020 dated 14.04.2005 to the District Drug Warehouse, Tamil Nadu Medical Services Corporation Ltd., Government Headquarters Hospital, Perundurai and the quantity being 6153.

4.It is the further case of the petitioners that the Drug Inspector issued a show cause notice dated 28.04.2008 and the petitioners gave reply dated 22.05.2008 disputing the analytical report of the product. The Drug Inspector forwarded the Test Report to the petitioner's licencing Authority/ Food and Drugs Authority, Gandhinagar and the said Authority issued a show cause notice dated 28.07.2008 and the petitioners filed a reply on 20.08.2008 and a personal hearing was held on 16.12.2009. The Commissioner of Food and Drugs Control Administration, Gujarat passed an order on 02.01.2020 warning the petitioners.

5.It is the further case of the petitioners that thereafter the petitioners received summons from the Omalur Court, during February, 2012, informing the petitioners that the Drug Inspector, Omalur has filed a prosecution case before the Judicial Magistrate Court, Omalur. The second petitioner appeared before the said Court on 01.03.2012 and filed a discharge petition on 12.06.2012.

6.It is the further case of the petitioners that since the petitioners disputed the Test Report, as per Section 25 (3) of the Drugs and Cosmetics Act, the Drug Inspector ought to have sent portion of the samples to be tested by the Central Drugs Laboratory, Kolkata within the shelf life of the drug, however, the respondent proceeded to prosecute the petitioners. Hence, this petition.

7.The learned counsel appearing for the petitioners would submit that during the pendency of this petition, samples were sent to the Central Drugs Laboratory, Kolkata and the Central Drugs Laboratory, Kolkata, in its report remarked that the sample conforms to I.P. with respect to the test for Dissolution, which is contrary to the report obtained by the then Drug Inspector. He would further submit that since the report of the Central Drugs Laboratory, Kolkata, is in favour of the petitioners, the complaint filed by the then Drugs Inspector before the Judicial Magistrate Court, Omalur, is un-sustainable.

8.Mr.Sakthivel, the present Drugs Inspector, Omalur Range, Salem, has filed counter affidavit, wherein, paragraph no.11 reads as follows:

"11.In continuation to this, the Analytical Report in Form - 2, No.2-1/2008 - P & P/CC - 157/699 - 701, dated 12.02.2009 of the Central Drugs Laboratory, Kolkata has been received by the Honorable Judicial Magistrate court, Omalur on 13.08.2019 wherein the sample of Metronidazole Tablets I.P.200 mg, Batch NO.A 5221, M/D - 03/05, D/E - 02/09, Mfr. M/s.J.B.Chemicals & Pharmaceuticals Ltd., Ankleshwar - 393 002 has been reported to conforms to I.P. with respect to the test for "Dissolution". Hence the subject sample has been reported as of standard quality by the Appellant Authority i.e., the Central Drugs Laboratory, Kolkata."

9.Since the Central Drugs Laboratory, Kolkata, has given its remarks in favour of the petitioners, this Court is of the opinion that forcing the petitioners to face the trial is unsustainable.

10.Hence, this criminal original petition is allowed and the proceedings in S.T.C.No.1022 of 2008 on the file of the learned Judicial Magistrate, Omalur, is hereby quashed. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-
Assistant Registrar (C.O.)

/True Copy/

सत्यमेव जयते Sub Assistant Registrar

To

- 1.The Judicial Magistrate, Omalur.
- 2.The Chief Judicial Magistrate, Salem.
- 3.The Drugs Inspector, Salem Range i/c
O/o.Asst. Director of Drugs Control, Salem Zone,
No.5, Thiruvalluvar Street, Subramania Nagar, Salem - 5.
- 4.The Public Prosecutor, High Court of Madras, Chennai 600 104.
+lcc to Mr.M.Sriram, Advocate Sr.No.302
AKM/07.02.2020 /3p-6c/

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