

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.26423 of 2013

1.M/s.Preet Remedies Private Limited  
rep. by Thiru Harpreet Singh Kalra  
Director of the Company

2.Thiru Harpreet Singh Kalra  
... Petitioners/A12 & A13

Vs.

K.Nandakumar, B.Pharm.,  
Drug Inspector,  
Erode II Range,  
Office of the Assistant Director of Drugs  
Control, Coimbatore Zone,  
Coimbatore.  
... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for records relating to the proceedings in C.C.No.113/2009 pending on the file of the learned Judicial Magistrate Court No.1, Gobichettypalayam, quash the same.

For Petitioners : Mr.V.Babu  
For Respondent : Ms.Saradha Devi  
Government Advocate (Crl.Side)

O R D E R

This criminal original petition has been filed seeking to call for the records in C.C.No.113 of 2009 pending on the file of the learned Judicial Magistrate Court No.1, Gobichettypalayam and to quash the same.

2.The first petitioner is the Manufacturing Company holding a valid and lawful license for manufacture of drugs. The second petitioner is the Director of the first petitioner Company.

3.The facts of the case is that on 01.12.2006, the then Drugs Inspector, Erode II Range, conducted inspection at the premises of M/s.Vinayaga Agencies, No.1 Buddar Street, Gobichettypalayam, Erode and drawn 4x10x10 tablets of Rabeprozole tablets 20 mg Rabifin B.No.PRF 5002 Mfg.2/06, Exp.1/2008 manufactured by M/s.Preet Remedies Private Limited for analysis under Form 17 dated 01.12.2006 and sent a portion of the sample for analysis under Form 18 dated 04.12.2006 to the Government Analyst (Drugs), Chennai.

4.On 21.01.2008, the Assistant Director of Drugs Control, Coimbatore Zone had stated on telephone that the test report dated 11.01.2008, was received from the Government Analyst, Drugs Testing Laboratory, Chennai and it stated that the sample is not of standard quality for the reason that the same does not conform to IP specification for enteric coated tablets with respect to disintegration and general description of tablets. Moreover the sample does not answer the identification test for Rabeprazone in sodium and ordered to investigate the matter.

5.On the same day, M/s.Vinayaga Agencies, Gobichettypalayam, was inspected by the then Drugs Inspector and the then Drugs Inspector found that no stock of the subject drug was available and they had exhausted the stock on 03.10.2007 itself. To this effect a voluntary statement was received from the partner cum competent person of the firm. Further, as required under Section Section 18 A of the Drugs and Cosmetics Act, 1940, the partner had stated that the subject drug was purchased from M/s.EFFAA Healthy Life Private Limited, No.4 (Old No.18) F Block, Anna Nagar East, Chennai and copy of the purchase invoice and distribution particulars were received and interim report was submitted.

6.The test report in Form 13 No.02272-D/06-07 dated 11.01.2008 of the Government Analyst, Chennai was received on 21.01.2008 by Assistant Director of Drugs Control and was forwarded to the then Drugs Inspector and the same was received by the then Drugs Inspector on 22.01.2008. Thereafter, a show cause memo dated 22.01.2008, requiring explanation for the contravention of Section 18 (a) (i) r/w 17B(d) of the Drugs and Cosmetics Act, 1940, was handed over to M/s.Vinayaga Agencies, Gobichettypalayam.

7.Thereafter, a letter was submitted to the Director of Drugs Control, Tamil Nadu through the Assistant Director of Drugs Control, Coimbatore Zone, Coimbatore, wherein permission was requested to investigate the matter at the supplier's level at Chennai and on 24.01.2008, the Director of Drugs Control, permitted the then Drugs Inspector to carry out the investigation at Chennai with the Drugs Inspector, Intelligence

Wing Office of the Director of Drugs Control, Chennai, Tamil Nadu.

8. During investigation, the competent person from M/s.EFFAA Healthy Life Private Limited disclosed that the subject drug were purchased by them from M/s.Ind. Swift Private Limited and they had supplied to M/s.Vinayaga Agencies, Gobichettipalayam. Thereafter, a show cause memo requiring explanation for the violation of Section 18(a)(i) r/w 17B(d) of the Drugs and Cosmetics Act, 1940, was handed over to the competent person incharge of M/s.Ind.Swift Private Limited. During investigation a show cause memo requiring explanation for the contravention of Section 18(a)(i) r/w 17B(d) of the Drugs and Cosmetics Act, 1940, was also issued to M/s.EFFAA Healthy Life Private Limited.

9. M/s.Vinayaga Agencies, Gobichettipalayam and M/s.Ind.Swift Private Limited submitted their replies. Since the replies submitted by them are not satisfactory, a proposal for prosecution was sent to the Director of Drugs Control and necessary sanction order was obtained. Thereafter, the respondent filed the complaint against the petitioners and others on 25.03.2009 before the learned Judicial Magistrate Court No.1, Gobichettipalayam and the same was taken on file as C.C.No.113 of 2009. Challenging the same, this criminal original petition has been filed.

10. The learned counsel appearing for the petitioners would submit that though the the then Drugs Inspector, Erode II Range, took the sample of the drug on 01.12.2006 and sent the same for analysis to the Government Analyst, Drugs Testing Laboratory, Chennai, the Government Analyst, Drugs Testing Laboratory, Chennai, sent the report only on 11.01.2008. He would further submit that the expiry date of the drug was January, 2008 and test report was received only on 11.01.2008, almost during the expiry of the shelf life of the drug. He would further submit that the complaint was filed before the learned Magistrate only on 25.03.2009, after the expiry of the shelf life of the drug.

11. This Court also heard the submissions made by the learned Government Advocate (Crl. Side).

12. It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Apex Court reported in (1999) 8 SCC 190 (State Of Haryana vs Unique Farmaid (P.) Ltd. and Ors.):

"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 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 *The State of Punjab v. National Organic Chemical Industries Ltd.*, JT (1996) 10 SC 480 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 & Ors.*, [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 & Anr.*, [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."

(emphasis supplied)

13.The decision cited supra is squarely applicable to the present case on hand, since the sample of the drug in the present case was taken on 01.12.2006 and was sent for analysis to the Government Analyst, Drugs Testing Laboratory, Chennai, however, the Government Analyst, Drugs Testing Laboratory, Chennai, sent the report only on 11.01.2008 and the complaint was filed before the learned Judicial Magistrate Court No.1, Gobichettypalayam on 25.03.2009. The expiry date of the drug was January, 2008 and the complaint was filed before the learned Magistrate, after the expiry of the shelf life of the drug.

14.In view of all the above and taking note of the delay in launching the prosecution, I am of the opinion that the prosecution launched against the petitioners will cause serious prejudice to them. Hence, I have no hesitation to allow this criminal original petition.

15.This criminal original petition is accordingly allowed and the proceedings in C.C.No.113 of 2009 on the file of the learned Judicial Magistrate Court No.1, Gobichettypalayam, is hereby quashed, in respect of these petitioners. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.1,  
Gobichettypalayam.
2. The Chief Judicial Magistrate,  
Coimbatore.
3. The Public Prosecutor,  
High Court of Madras,  
Chennai 600 104.

+lcc to Mr.Venkatawswamy Babu, Advocate, SR.No.2802.

SV(CO)  
CSR: 18.02.2020

Cr1.O.P.No.26423 of 2013

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