

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.29269 of 2013

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

2. Thiru Kamalesh k Jain ... Petitioners

Vs.

TamilNadu State Rep by
Senior Drugs Inspector,
Villupuram Range I/c
Cuddalore 3.

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records relating to the criminal case in STC No.339 of 2012 on the file of the learned Judicial Magistrate Court, Thirukoilur and to quash the same.

For Petitioners: Mr.G.Rajkumar
for M/s.Ramasamy Law Associates

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

सतममेन जयते
O R D E R

This criminal original petition has been filed seeking to call for the records relating to the criminal case in STC No.339 of 2012 on the file of the learned Judicial Magistrate Court, Thirukoilur and to quash the same as illegal.

2.The first petitioner Company is the Manufacturer of Pharmaceutical products and the second petitioner is the Director of the first petitioner Company. The first petitioner Company among other medicines, is a Manufacturer of Cephalexin Capsules, a drug which is being manufactured under license in its factory premises situated at C-28, SIDCO Pharmaceutical Complex, Alathur - 603 110.

3.The facts of the case is that the then Drugs Inspector, Villupuram Range, took samples of the drug namely, Cephalexin Capsules IP 250 mg B.No.CEC 09, M/D 03/04, E/D 02/06, from the premises of medical store, Thirukoilur Medical College Hospital, Thirukoilur, for analysis and intimation vide Form 17 dated 07.10.2004. The above sample which was drawn was sent for analysis under Form 18 dated 08.10.2004 to the Government Analyst (Drugs), Drugs Testing Laboratory, Chennai, who in turn reported that the drug was "Not of Standard Quality" vide report under Form 13 No 02187-D/2004-05, dated 10.02.2005 and that the sample does not conform to IP specifications for Cephalexin Capsules in respect of assay.

4.After receiving copy of the analytical report, the Drugs Inspector on 23.02.2005 issued a letter to the Medical Officer, I/c of Medical Stores, Govt. Medical Hospital, Thirukoilur, requesting him to disclose the source of supply of the subject drug who in turn had written on 10.06.2005 that the drug was acquired from TNMSC, Villupuram on 08.06.2004. The petitioner submitted that the Complaint reads that on receipt of letter dated 10.06.2005, the Drugs Inspector on 28.06.2005 wrote to the Dist.Ware House, TNMSC Ltd. Villupuram along with copy of Form 13 asking them to disclose the name and address of the persons from whom the impugned drug was purchased. In the reply letter dated 06.07.2005, TNMSC, Villupuram, disclosed that the impugned drug was received from the first petitioner's company under invoice No.311.

5.Thereafter, the Drugs Inspector on 26.07.2005 issued a show cause memo to the first petitioner company calling for the explanation for the contravention under Section 18 (a) (i) of the Drugs and Cosmetics Act, 1940, for having manufactured for sale and sold a Not of Standard Quality drug and also requested records for manufacturing and testing etc.,. Thereafter, the petitioner sent a reply dated 11.08.2005 along with all the required documents and requested to send one portion of the sample to the CDRL, Calcutta as per Section 25(3) Drugs and Cosmetics Act, 1940 and disagreed with the test report dated 10.02.2005. The petitioners had also informed that the drug Analyst had given different reading for the samples of the same batch of the same drug when the sample was sent from Theni and karur Range and requested for re testing from CDRL vide letter dated 11.8.2005 and 20.09.2005, but after the self life of the drugs, the State had filed a compliant in the year 2012 when the drug had lost its self lift which is against the statue. However, the respondent filed a complaint was filed before the learned Judicial Magistrate Court, Thirukoilur in STC No.339 of 2012. Challenging the same, this criminal original petition has been filed.

6.The learned counsel appearing for the petitioners would

submit that though the then Drugs Inspector, Villupuram range, took samples of the drug namely, Cephalexin Capsules IP 250 mg, on 08.10.2004 and sent the same for analysis under Form 18, dated 08.10.2004, to the Government Analyst (Drugs), Drugs Testing Laboratory, Chennai, sent the report only on 10.02.2005.

7.The learned counsel appearing for the petitioners would further submit that a show cause memo dated 26.07.2005, was issued to the first petitioner Company calling for explanation for the contravention under Section 18 (a) (i) of the Drugs and Cosmetics Act, 1940 and the petitioners sent a reply dated 11.08.2005 stating that they were doubtful about the storage of the sample in the Drug Testing Lab and disagreed with the test report and requested to send one portion of the sample to the CDRL.

8.The learned counsel appearing for the petitioners would further submit that the Investigating Officer sent a detailed report to the Director of Drugs Control to accord sanction for prosecution only on 10.02.2005 and thereafter, on 20.03.2007 the Directorate of Drugs Control, Tamil Nadu accorded sanction to prosecute the petitioners herein and a complaint was filed before the learned Judicial Magistrate Court, Thirukoilur in STC No.339 of 2012.

9.The learned counsel appearing for the petitioners would further submit that the expiry date of the drug was February, 2006 and the complaint was filed before the learned Magistrate only in the year 2012, almost during the expiry of the shelf life of the drug. The learned counsel would further submit that the drug was not of standard quality only on 10.02.2005, but the samples does not confirm to IP Specifications. Hence, if the conditions in the lab are not upto the IP standards, results of analysis will vary.

10.The learned counsel appearing for the petitioners would further submit that the petitioners request for sending portion of the sample to the CDRL, Calcutta, was not entertained and hence the valuable right of the petitioners under Section 25 (3) of the Drugs and Cosmetics Act was lost. The learned counsel would further submit that the petitioners Company was not given opportunity before the expiry of the shelf life of the product and thereby, they have lost their valuable right for sending the same for second Analysis and therefore, the prosecution launched by the respondent is not sustainable in the eye of law.

11.This Court also heard the submissions made by the learned Additional Public Prosecutor.

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 file in 2012 and was sent for analysis under Form 18, dated 08.10.2004 to the Government Analyst (Drugs), Drugs Testing Laboratory, Chennai, however, the Government Analyst (Drugs), Drugs Testing Laboratory, Chennai, sent the report only on 10.02.2005.

14.Further, the show cause memo was issued to the first petitioner Company only 26.07.2005 and the petitioners sent a reply dated 11.08.2005 stating that they were doubtful about

the storage of the sample in the Drug Testing Lab and disagreed with the test report and requested to send one portion of the sample to the CDRL.

15.The Investigating Officer sent a detailed report to the Director of Drugs Control to accord sanction for prosecution only on 20.03.2007, the Directorate of Drugs Control, Tamil Nadu accorded sanction to prosecute the petitioners herein and the complaint was filed before the learned Judicial Magistrate Court, Thirukoilur. The analyst test report was 10.2.2005 and the complaint was filed before the learned Magistrate was in 2012, i.e. almost during the expiry of the shelf life of the drug.

16.Further, the petitioners request for sending portion of the sample to the CDRL, Calcutta, was not entertained and hence the valuable right of the petitioners under Section 25 (3) of the Drugs and Cosmetics Act was lost. The first petitioner Company was not given opportunity before the expiry of the shelf life of the product and thereby, the petitioners have lost their valuable right for sending the same for second Analysis.

17.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/ accused will cause serious prejudice to them as they have lost their valuable right for sending the sample for second analysis. Hence, I have no hesitation to allow this criminal original petition.

18.This criminal original petition is accordingly allowed and the proceedings in STC.No.339 of 2012 on the file of the learned Judicial Magistrate Court, Thirukoilur, is hereby quashed. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jrs

To

1.The Judicial Magistrate Court,
Thirukoilur.

2.The Senior Drugs Inspector,
Villupuram Range I/c
Cuddalore 3.

3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.S.Ramasamy Law Associates, Advocate SR.7366

Crl.O.P.No.29269 of 2013

SS(CO)
CB(20/03/2020)



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