

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.OP.No.3143 of 2013
and M.P.No.1 of 2013

1.M/s.Preet Remedies Private Limited,
Rep. by its Managing Director,
Harpreet Singh Kalra
No.184, HPSIDC, Industrial Area
Baddi - 173 205, Himachal Pradesh.

2.Harpreet Singh Kalra
Managing Director
M/s. Preet Remedies Private Limited,
Rep. by its Harpreet Singh Kalra
No.184, HPSIDC, Industrial Area
Baddi - 173 205, Himachal Pradesh.

....Petitioners/Accused 1 & 2

Vs

The State of Tamilnadu
Rep. by Drug Inspector,
Salem II Range,
O/o. The Assistant Director of Drugs Control,
Salem Zone,
Salem - 5.

....Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings in C.C.No.31 of 2010 pending on the file of Judicial Magistrate Court No.1 at Attur, and to quash the same.

For Petitioners : Mr.V.Babu

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to call for the entire records concerning C.C. No. 31 of 2010 on the file of the learned Judicial Magistrate No. I, Attur and quash the same.

2. The case of the petitioner is that the respondent has filed a complaint against the petitioners on the file of the learned Judicial Magistrate Court No.1, Attur in C.C.No.31 of 2010 alleging that the petitioners have contravened the provisions under Section 19(a)(i) of the Drugs and Cosmetics Act, 1940. The respondent alleges that the Drugs Inspector, Salem II Range (incharge), drew samples of drug 4x5x10s - RABIFIN-D, Batch No.PRFD-5005, D/M-7/06, D/E-6/08 manufactured by the first petitioner from the premises of M/s.Sree Dugai Pharma and sent the same for analysis to Government Analyst (Drugs), Chennai on 24.01.2008 and received a report declaring that the said sample is not standard quality and the same does not conform to IP specification for Rabeprazole Sodium tablets with respect to dissolution and the content of Rabeprazole Sodium.

3. The learned counsel for the petitioner submitted that the complaint and the prosecution in C.C.No.31 of 2010 is liable to be quashed on the ground that as per Section 25(2) of the Drugs and Cosmetics Act, 1940, the complainant has to furnish a copy of the Government Analyst report to the accused. He further submitted that the shelf life of the drug expired on 6th month of 2008, however the respondent filed his complaint only on 03.11.2008, after 5 months of the expiry of shelf life of the drug. In support of his contention he placed reliance on the judgment of Hon'ble Supreme Court in the case of Medicamen Biotech Ltd., vs. Drug Inspector reported in (2008 7 SCC) the relevant portion of which is extracted hereunder:

"In the affidavit filed to the petitioner by Dr.D.Rao, Deputy Drugs Controller, and in arguments before us, it has been repeatedly stressed that the delay in sending of the sample to the Central Drugs Laboratory had occurred as the appellant had avoided service of summons on to till 09.05.2005. This is begging the question. We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had

nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why the complaint could not have been filed earlier and the fourth sample sent for retesting well within time. 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."

4. The learned Additional Public Prosecutor submitted that the delay in filing the complaint is due to administrative reasons which has led to the report been obtained belatedly 5 months later.

5. Considering the submissions made by the counsel on either side and perusing the materials available on record, it is not in dispute that the sample was taken for analysis and report was obtained from the authority after the expiry of shelf life of the drug. That being the factual position, entertaining the complaint based on the report of the analyst in respect of a drug which has lost its shelf life is per se impermissible and the prosecution in pursuant to the same cannot be sustained. Accordingly, the complaint filed on 03.11.2008 in C.C.No.31 of 2010 on the file of the Judicial Magistrate No.1, Attur is quashed and the petition is allowed. Connected miscellaneous petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate Court No.1,
Attur.

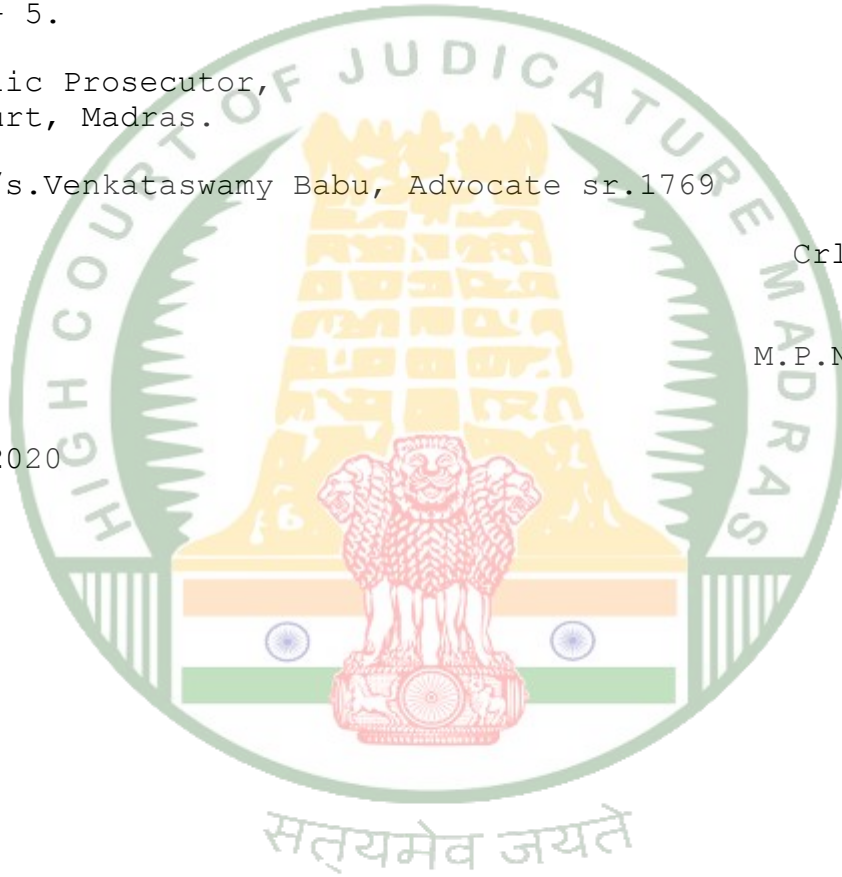
2.The Drug Inspector,
Salem II Range,
O/o. The Assistant Director of Drugs Control,
Salem Zone,
Salem - 5.

3.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.Venkataswamy Babu, Advocate sr.1769

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and
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sj(co)
nr 25/02/2020



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