

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

918 CRIMINAL WRIT PETITION NO.723 OF 2019

MANISH SURESHCHANDRA KANODIA AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. S.H. Tripathi

APP for Respondent/State : Mr. R.B. Bagul

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CORAM : N.R. BORKAR, J.

DATE : 18TH NOVEMBER, 2021

PER COURT :

This petition takes an exception to the order dated 20.08.2018, passed by the learned Ist Adhoc Addl. Sessions Judge, Jalgaon, below Exh.30, in Special Case No.11 of 2015.

2. The respondent No.1 filed a complaint against the petitioner and respondent Nos.2 to 4 for the offence punishable under Sections 18 (a)(i) read with Section 16 punishable under Section 27 (d) read with Section 34 and Section 18-B punishable under Section 28-A read with Section 34 of the Drugs & Cosmetics Act, 1940 (for short, '**the Act**'). The petitioner moved an application for discharge. The learned Addl.

Sessions Judge rejected the application by the order impugned.

3. I have heard the learned counsel counsel for the petitioners and learned A.P.P. for respondent No.1.

4. On 3rd September, 2013, the respondent No.1 visited M/s Maxim Promoters & Distributors, Jalgaon and drawn the sample of the drug Vigi zyme (Pepsin with Diastase Liquid) manufactured by M/s Progressive Life Sciences Pvt. Ltd. The sample was sent for test and analyses to Government Analyst, Aurangabad and it was found to be 'Not of standard quality'. The learned counsel for the petitioners submits that sample was taken on 3rd September, 2013 and the report was received on 8th October, 2013 and on 31st October, 2013, the controlling authority directed to launch the prosecution, however, the complaint came to be filed on 10th September, 2014. It is submitted that during this period, the sample lost self life and thus the vital right of petitioners to get the sample rechecked under Section 25 of the Act is violated. It is further submitted that petitioner Nos.1 and 2 are directors of petitioner No.3. It is submitted that respondent Nos.3 and 4 are the approved technical persons and therefore petitioner Nos. 1 and 2 are not responsible for alleged offences. The learned counsel for the

petitioners in support of his submission has relied upon the decision in the case of ***M/s. Quixotic Healthcare & Ors. Vs. State of Maharashtra & Anr.***, reported in ***2020 All MR (Cri) 1880***.

5. Learned A.P.P. for respondent No.1 supported the order passed by the learned trial Court.

6. Admittedly, the sample was drawn on 03.09.2013 and, on the same day, it was sent for the test analysis. The report of the Analyst was received on 08.10.2013. The said report was then sent to the petitioners and other accused on 30.10.2013. The shelf life of the sample i.e. expiry date was till March, 2014.

7. According to sub-Section 3 of Section 25, any document purporting to be the report signed by a Government Analyst shall be evidence of facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken, has within 28 days of receipt of a copy of the report notified in writing to the Inspector or the Court before which any proceedings in respect of sample are pending that he intends to adduce evidence in controversion of the report. If such intention to adduce evidence in controversion of a Government Analyst's report is notified, then only the sample is required to be sent

to Central Drug Laboratory under Sub-Section 4. It is not the case of petitioners that in the present case such intention of adducing evidence in controversion of Government Analyst's report was notified to Inspector within 28 days after receipt of report by them on 30th October, 2013. Thus, there is no substance in the submission of violation of right of petitioners under Section 25 of the Act.

8. The judgment relied upon on behalf of the petitioners would not apply to the facts of present case as therein the sample was not tested within a period prescribed under Rule 45 and sample was tested after the expiry period.

9. The second submission that the petitioner Nos.1 and 2 are not responsible for alleged offences cannot be considered at the time of discharge.

10. In view of this, Criminal Writ Petition stands dismissed.

(N.R. BORKAR, J.)