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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.OP.NO.19171/2015

[VIDEO CONFERENCING]

1. M/s.Unicure [India] Pvt Ltd
represented by Abdul Mateen
Director of M/s.Unicure [India]
Pvt., Ltd., C-22, Sector-3
Noida 201 301.

2. Abdul Mateen

... Petitioners / Accused

Versus

Tamil Nadu State represented by
Drugs Inspector
Coimbatore - I Range
O/o.Assistant Director of Drugs Control
Coimbatore Zone, 219, Race Course Road
Coimbatore-18.

... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to quash the proceedings against the petitioners in CC.No.89/2015 on the file of the learned Judicial Magistrate No.III, Coimbatore.

For Petitioners	:	Mr.P.Ramesh Kumar
For Respondent	:	Mr.E.Raj Thilak Government Advocate [Criminal Side]



ORDER

- (1) The matter has come up for consideration after about six years which itself is quite a long time in taking up the issue as the issue involved is whether the complaint as originally filed, was barred by limitation.
- (2) There were two other points taken out by the learned counsel for the petitioner herein, viz., though the petitioners/accused had taken advantage of Section 25[4] of the Drugs and Cosmetics Act, 1940, and had given a reply on 05.05.2009 with respect to a complaint dated 08.04.2009, which according to the petitioner, was within the stipulated period of 28 days and that there has been no reference to the said reply in the complaint as lodged before the learned Magistrate.
- (3) Let me go a little deeper into the facts of the case.
- (4) Originally, a Show Cause Memo has been issued on 30.03.2009 to the petitioners herein which had been, according to the petitioners, replied on 05.05.2009. Form-13 had been issued earlier and it is stated that owing to the analysis, drugs which were analysed, were not of standard quality as expected and as defined under the Act, and the Rules thereunder. It was stated that the samples did not conform to IP specification for Enalapril Maleate tablets with respect to the content of Enalapril Maleate. It is stated that that each tablet contained 2.5mg, whereas the limit was 90% to 110% of the label claim. The sample actually contained 73.56%. Basing their complaint on the basis of such Analysis Report received from the Laboratory, the prosecution had further approached the jurisdictional Magistrate Court and had filed the complaint under Section 32 of the said Act for the alleged contravention of Section 18[a][i] of the said Act and punishable under Section 27[d] of the said Act.
- (5) This complaint was originally lodged before the learned Judicial Magistrate-3, Coimbatore and perusal of the records now available with the Court shows that it is dated 17.08.2009. The learned Magistrate had, at that time,



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returned it for the reason that a copy for the accused should be enclosed. But what has been forgotten in the entire counter is that when the complaint had been lodged, the learned Magistrate had returned it stating that the complaint is time barred. Once such an endorsement had been made by the learned Magistrate, there is an onus on the part of the prosecution to explain, how the complaint is within the period of limitation as stipulated. The counter does not answer that specific issue.

- (6) The two points therefore raised by the petitioners herein, namely that they had sent reply as stipulated under Section 27[4] of the said Act within a period of 28 days and which reply had not been taken into consideration and also the further fact that the complaint was lodged beyond the period of limitation, strongly makes out a case on behalf of the petitioners/accused herein.
- (7) To summarise, the Criminal Original Petition has been filed seeking to quash the proceedings in CC.No.89/2015 now pending on the file of the learned Judicial Magistrate-3, Coimbatore.
- (8) The two preliminary aspects taken, which do not touch on the merits of the matter, but which violate the Rules framed under the law, prevails upon me to interfere with the further proceedings in CC.No.89/2015 and thereby, direct the said proceedings to be stopped and to further direct that the same be quashed insofar as the petitioners/accused are concerned.
- (9) The Criminal Original Petition stands allowed accordingly.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

AP



1. The Judicial Magistrate No.III,
Coimbatore.

2. The Drugs Inspector,
Coimbatore - I Range,
O/o.Assistant Director of Drugs Control,
Coimbatore Zone, 219, Race Course Road,
Coimbatore-18.

3. The Public Prosecutor,
High Court, Madras.

Cr1.OP.No.19171/2015

NK(CO)
RLP(14/09/2021)