

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1034 of 2019

and

Cr.M.P.No.14245 of 2019

M/s.Arbro Pharmaceiticals Ltd.,
Represented by its Director
M.Vinod Chhabra
6/14, Kirthi Nagar Industrial Area,
New Delhi - 110016.

...Petitioner/Petitioner/
Accused-1

Vs

Union of India Represented by
The Drugs Inspector
CDSCO South Zone, Chennai.

... Respondent/Respondent/
Complainant

PRAYE: This Criminal Revision case is filed under Section 397 read with Section 401 of Cr.P.C. against the order dated 07.08.2019 passed by the learned Xth Metropolitan Magistrate in Crl.M.P.No.5885 of 2016 dismissing the petition for discharge filed under Section 245 (1) of Cr.P.C.

For Petitioner : Mr.P.Ramesh Kumar

For Respondent : Mr.S.Diwakar

Central Government Standing
Panel Counsel

सत्यमेव जयते

O R D E R

The present Criminal Revision has been filed against the order dated 07.08.2019 passed by the learned Xth Magistrate in Crl.M.P.No.5885 of 2016, dismissing the petition for discharge filed by the petitioner/A1 under Section 245(i) of Cr.P.C.

2. The brief facts and circumstances of the case are as follows:

(i) The respondent had filed the complaint in C.C.No.3370 of 2012 on the file of the Xth Metropolitan Magistrate, Egmore, Chennai for offences under Section 18(A) (i) r/w Section 27D of the Drugs and Cosmetics Act alleging that the Complainant drew

samples of Vasoance-5 tablets from the premises of Central Government Analyst, Central Drug laboratory, Kolkata for analysis and by a report dated 18.04.2011, the Government Analyst opined that the drug is not of standard quality for the reason that it does not confirm to IP with respect to Assay.

(ii) Further investigation of the case lead to the filing of the charge sheet against the second accused who is the supplier of drug and the first accused who is the manufacturer of the drug. Show Cause Notice was issued to the first accused and the first accused disagreed by his reply dated 16.11.2011, leading to the filing of the complaint against the A1 after applying necessary sanction to prosecution.

3. It is the case of the petitioner that the contention of the complaint to make out a charge under Section 18(A) (i) r/w Section 27D of the Drugs and Cosmetics Act and the deposition of PW1 implicate the petitioner and therefore, the present petition has been filed under Section 245(1) C.R.P.C. The trial Court after considering the contentions of the petitioner, dismissed the petition on the ground that the petitioner has not made out a case for discharge and the decisions relied upon him are not applicable to the case on hand. Against the said order passed by the Trial Court, the Revision case has been filed.

4. It is the contention of the learned counsel for the petitioner that the samples drawn by the Drugs Inspector have to be sent to the Central Government Analyst, Central Drug laboratory and it cannot be directly sent to the Authority appointed under Section 6 as the said Authority is an Appellate Authority to whom the petitioner relies for sending samples.

5. The trial Court held that thus materials which requires evidence and can be decided only at the time of trial and the same cannot be adjudicated in the discharge petition and therefore, negated the contention of the petitioner.

6. The Report of the Central Government Analyst, Central Drug laboratory under Section 20 would be challenged by way of an appeal before the Central Government Analyst, Central Drug laboratory by researching to the remedy under Section 25(iv) of the Act. But that would be negative, the entire case of the Drug Inspector to send the sample directly to the Central Government Analyst, Central Drug laboratory which is Higher Authority by its view. A Report given by the Government Analyst, could be tested before the Central Government Analyst, Central Drug laboratory. But sample tested at the Central Government Analyst, Central Drug laboratory and Report received is a conclusive one which would become in controversy to the case of the petitioner.

7. It is not the case of the petitioner, that the sample has been wrongly tested by the Central Government Analyst, Central Drug laboratory. It is only a technical objection there is an Appellate remedy to the petitioner if at all the petitioner is aggrieved by a such process. The Court would be justified in framing charges, if the prosecution has shown the seed in the form of some incriminating materials which has got the potential to develop itself into a full-fledged one during trial.

8. At the stage of framing of charge, the Court has to consider the material with a view to find out if there is sufficient ground for prosecution that the accused has committed the offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

9. A perusal of the averment made in the complaint filed by the respondent shows that there are prima facie material to frame charge.

10. For all the reasons, this Court is of the considered view that the petition to discharge has been rightly dismissed by the Court below. This Court finds no reason interfere with the said order passed by the court below.

11. Accordingly, this Criminal Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Xth Metropolitan Magistrate,
at Egmore, Chennai.

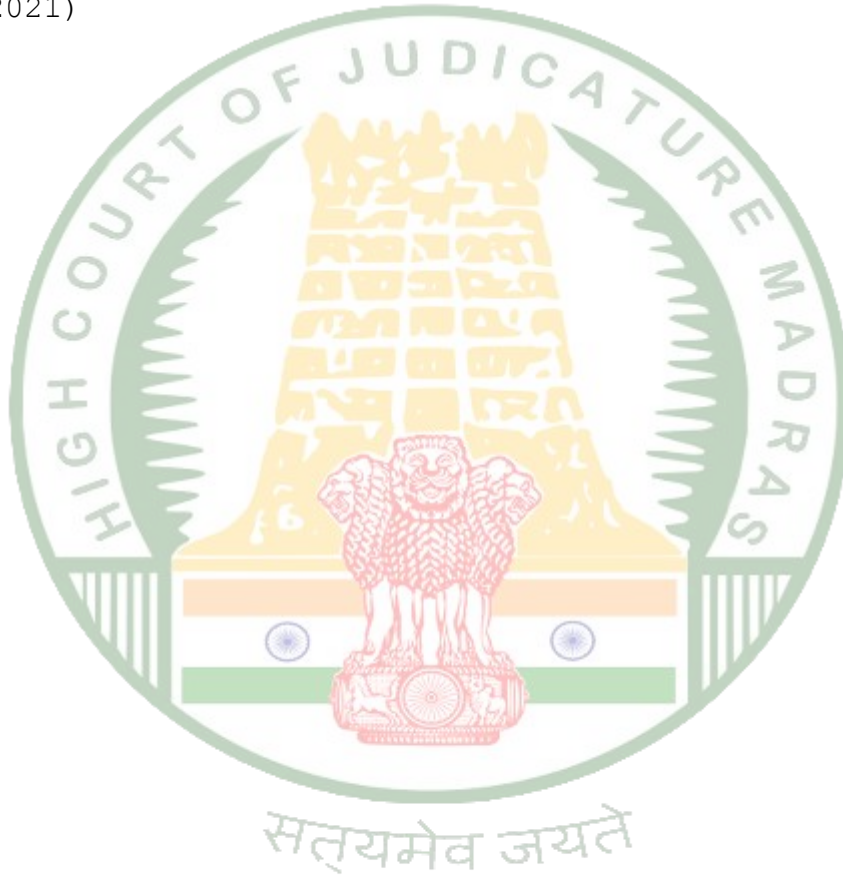
2. The Drugs Inspector
Union of India
CDSCO South Zone, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Divakar, Advocate, S.R.No.17431

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NR(CO)
KM(19/04/2021)



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