



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 01.03.2021

DATE ON WHICH PRONOUNCED : 31.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)No.5221 of 2017

and

Crl MP(MD)No.3703 of 2017

WEB COPY

1.M/s.Eurokem Laboratories Pvt. Ltd.,  
C25, SIDCO Complex,  
Alathur represented by  
Managing Director  
Thiru Rajesh.B Jain

2. Thiru. Rajesh B.Jain S/o.Babulal Jain,  
Director of the M/s.Eurokem Laboratories Pvt.Ltd,  
C25, Sidco Complex,  
Alathur

... Petitioner/Accused 1 & 2

Vs.

The State of Tamil Nadu,  
Rep by the Drugs Inspector,  
Tenkasi Range,  
O/o.The Assistant Director of Drugs Control,  
C-36, 25<sup>th</sup> Cross Street,  
Maharaja Nagar,  
Tirunelveli - 600 011.

... Respondent/Complainant

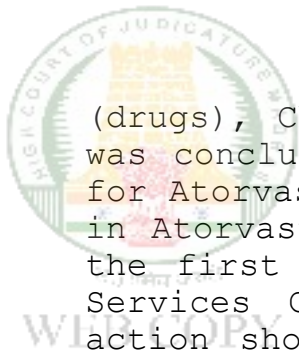
Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records in C.C.No.317 of 2015 on the file of the Judicial Magistrate No.1, Tirunelveli, and quash all further proceedings against the accused.

For Petitioner : Mr.Palanivelrajan  
For Respondent : Mr.M.Ganesan,  
Government Advocate (Crl.Side)

### ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.317 of 2015 on the file of the Judicial Magistrate No.1, Tirunelveli.

2. The case of the petitioner is that the petitioner has manufactured Atorvastatin tablets. On 07.10.2014, the samples were taken from the petitioners ware house by the respondent and thereafter the same were forwarded for analysis to the Government Analyst (drugs), Chennai-6. On 20.11.2014, the Government Analyst

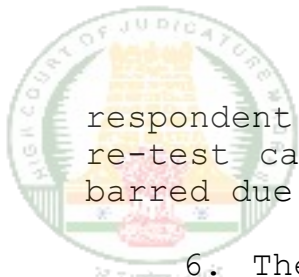


(drugs), Chennai-6, sent a report. As per the aforesaid report, it was concluded that the samples did not conform to IP specification for Atorvastatin Tablets with respect to the content of Atorvastatin in Atorvastatin Calcium and Dissolution. Thereafter, on 28.11.2014, the first show cause notice was issued to the Tamil Nadu Medical Services Corporation Limited, Tirunelveli-11, to show cause why action should not be taken against them for having distributed a drug which was not standard quality which is contravention of the Section 18 (a) (i) of the Drugs and Cosmetics Act, 1940. The Second show cause notice was thereafter, issued to the petitioner to show cause why action should not be taken against them for contravention of Section 18 (a) (i) of the Drugs and Cosmetics Act, 1940, as it manufactured and sold which are not of standard quality. Thereafter, the petitioner sent a representation on 31.03.2015 and submitted that the report as in Form-13 was not furnished to them and he had requested the respondent to furnish the same by letter dated 05.03.2015. By communication dated 31.03.2015 the show cause notice enclosed the copy of the Form 13. Thereafter, the petitioner sent a representation on 27.04.2015 disputing the findings arrived by the Government Laboratory in their report dated 20.11.2014. The petitioner specifically requested to recheck the sample and furnish the required documents. Though show cause notice was issued to the petitioner on 31.03.2015, no further orders were passed. However, on 18.05.2015 the respondent obtained sanction to prosecute the petitioner under the provision of the Drugs and Customs Act for filing Section 18 (a) (i) which is punishable under Section 27 (d) of the said Act.

3. It is the contention of the petitioner that though sanction was obtained as early as on 18.05.2015, the private complaint under Section 32 of the Drugs and Cosmetics Act for the alleged contravention of Section 18 (a) (I) of the Drugs and Cosmetics Act punishable under Section 27 (d) came to be filed before the Judicial Magistrate Court-I, Tirunelveli on 05.08.2016. It is the further contention of the petitioner that the shelf life of the Atorvastatin Tablets is only 24 months and the sample which was sent for testing based on which the prosecution was initiating was manufactured during the Month of February 2014. It is expired, during the Month of Janury 2016. It is the contention of the learned counsel appearing for the petitioner that the shelf life of the drug had expired by the time the steps taken for prosecuting the petitioner.

4. Heard both sides.

5. If really, the respondent noted that the petitioner with ultimate intention, suppressed the receiving of Form-13, he would have very well stated the same in the notice stating that Form-13 was already sent. But, there is no such statement, in the notice, sent by the respondent. So, the contention on the part of the



respondent that the petitioner has lost the right of demanding the re-test cannot be accepted. The second contention that it is also barred due to lapse of time, cannot be accepted.

6. The time must be calculated only from the date of sending Form-13 to the petitioner by the respondent. If it is so calculated, as mentioned earlier, the option was exercised by the petitioner within in 28 days, which is while within the time prescribed.

7. In the letter dated 27.04.2015, the petitioner has expressed his willingness to re-test the drug on the ground that there was a possibility of some excipient interfering into the analysis. So, the sample was requested to re-test at the end of the respondent. Now, the question which arises for consideration is whether the request made by the petitioner was complied or not. The Hon'ble Supreme Court in a judgment reported in **State of Punjab Vs. Natioanl Organisation Private Limited 1996 11 SCC 630**, has stated that two options are available to the accused. The first one is that he can notify the Court that he intents to prove the contrary over the report of the analysis. After receiving such notice, he is entitled to have the drug re-tested by the Central laboratory. The other option is that after the complaint is laid, he can request the Court to send the sample for analysis. So, from the judgment of the Hon'ble Supreme Court, it is evident that two options are available to the accused. One is before the filing of the complaint and another one is after filing of the complaint. Even after the notification of the intention by the petitioner, the respondent has not taken any steps to send the sample for re-testing before filing the complaint. Law requires, the respondent, to perform his duties utmost promptitude.

8. The second option, which has been available to the petitioner has been lost due to late filing of the complaint. Because from the narration of the event, it is seen that the complaint was filed only after the expiry of shelf life period of drug. So, this eventually disabled the petitioner from exercising his right of re-testing the drug.

9. Moreover, the late filing of the complaint after the shelf life period of drug is over is highly deprecated by the Hon'ble Supreme Court in the judgment reported in **Laborate Pharmaceuticals India Ltd., & Others Vs. State of Tamil Nadu 2017 Cr1.L.J.2931**. Paragraphs 7 to 9 of the said order is as follows:-

"7. A reading of the provisions of Section 23 (4) and 25 of the Act would indicate that in the present case the sample having been taken from the premises of the retailer had to be divided into four portions; one portion is required to be given to the retailer; one portion is required to be sent to the Government Analyst and one to the Court and the last one to the



manufacturer whose name, particulars, etc., is disclosed under Section 18A of the Act. In the present case, admittedly, one part of the sample that was required to be sent to the appellant (manufacturer) under Section 23 (4) (iii) of the Act was not sent. Instead, what was sent on 22<sup>nd</sup> March, 2012 was only the report of on 13<sup>th</sup> September, 2012 the appellant had indicated its desire to have another part of the sample sent to the Central Laboratory for re-analysis. This was refused on the ground that the aforesaid request was made much after the stipulated the Government Analyst. When the part of the sample was not sent to the manufacturer, the manufacturer could not have got the same analysed even if he wanted to do so and, therefore, it was not in position to contest the findings of the Government Analyst. In the present case, the sample was sent to the appellant-manufacturer on 10<sup>th</sup> August, 2012 and the appellant had indicated its desire to have another part of the sample sent to the Central Laboratory for re-analysis. This was refused on the ground that the aforesaid request was made much after the stipulated period of 28 days provided for in Section 25(3) of the Act.

8. The cognizance of the offence(s) alleged in the present case was taken on 4<sup>th</sup> March, 2015 though it appears that the complaint itself was filed on 28<sup>th</sup> November, 2012. According to the appellant the cough syrup had lost shelf life in the month of November, 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4<sup>th</sup> March, 2015 though the same was filed on 28<sup>th</sup> November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been



violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution."

10. When we apply this principle, the complaint is liable to be quashed.

11. In the result, the Criminal Original Petition is allowed and C.C.No.317 of 2015 pending on the file of the Judicial Magistrate No.1, Tirunelveli stands quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.1,  
Tirunelveli,
2. The Chief Judicial Magistrate, Tirunelveli.
- 3.The Drugs Inspector,  
Tenkasi Range,  
O/o.The Assistant Director of Drugs Control,  
C-36, 25<sup>th</sup> Cross Street,  
Maharaja Nagar,  
Tirunelveli - 600 011
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate ( SR-14759[F]  
dated 31/03/2021 )

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Crl MP(MD)No.3703 of 2017  
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SSS(CO)

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