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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.28410 OF 2018

AND

CRL.M.P.NOS.16550 & 16551 OF 2018

1. M/s.Svizera Labs Pvt. Ltd.,
Represented by Vinay R. Sapte,
Director of M/s.Svizera Labs Pvt. Ltd.,
Plot No.D-16/6, TTC Industrial Area,
MIDC, Turbhe, Navi Mumbai 400 073
Maharashtra.
2. Vinay Ramkant Sapte
Director of M/s.Svizera Labs Pvt. Ltd.,
Plot No.D-16/6, TTC Industrial Area,
MIDC, Turbhe, Navi Mumbai 400 073
Maharashtra.
3. Rashmi Vinay Sapte,
Director of M/s.Svizera Labs Pvt. Ltd.,
Plot No.D-16/6, TTC Industrial Area,
MIDC, Turbhe, Navi Mumbai 400 073
Maharashtra.
4. Maneesh R. Sapte,
Director of M/s.Svizera Labs Pvt. Ltd.,
Plot No.D-16/6, TTC Industrial Area,
MIDC, Turbhe, Navi Mumbai 400 073
Maharashtra.

... Petitioners

Vs.

Union of India,
Represented by
Drugs Inspector,
Office of the Deputy Drugs Control,
South Zone,
2nd Floor Shastri Bhawan, Annex
Chennai - 600 006.

... Respondent



Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in C.C.No.15189 of 2014 on the file of the X Metropolitan Magistrate Court at Egmore and quash the same.

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For Petitioners : Mr.R.Mohandoss
For Respondent : Mr.B.Sudhir Kumar
Senior Central Government
Standing Counsel

O R D E R

This Criminal Original Petition has been filed to quash the private complaint initiated for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 ("the Act" for brevity).

2.It is the case of the prosecution that, on 20.03.2013, the Drug Inspector made an official visit to Government Medical Stores Depot, Navel Hospital Road, Periamedu, Chennai, who is the distributor of drugs and lifted samples of drug, namely, ISONIAZID Tablets IP 300 mg, whose expiry date was in June, 2015. After following the procedure contemplated under Section 23 of the Act, the sample was divided into four portions, and one portion was given to the person where the samples were seized and another portion was sent to the Government Analyst. The report of the Government Analyst indicated that the sample was sub-standard and thereafter, a letter was addressed to the distributor and on receipt of reply from the distributor about the details of the manufacturer, a portion of the sample was sent to the manufacturer on 20.12.2013. Thereafter, the prosecution has been launched by the respondent.

3.The manufacturer of the drug is before this Court by filing this petition to quash the proceedings as against them.

4.The learned counsel for the petitioners mainly contended that the Drug Inspector has not followed the procedure contemplated under Section 23 of the Act and further, the Drug Inspector was not appointed for the specific area. He further submitted that the storage condition of the Government Depot from where the samples were lifted, has not been mentioned in the report. The learned counsel contended that, one portion of the sample was sent to the manufacturer with an inordinate delay of nine months. The learned counsel submitted that the above conditions have been violated, which are mandatory in nature, and hence, the entire complaint is not maintainable and is



liable to be quashed. The learned counsel for the petitioners relied on the judgment of the Bombay High Court in the case of State of Maharashtra v. R.A.Chandrawarkar and others [1999 (5) Bom.C.R. (Cri) 519 : 1999 CriLJ 4449].

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5.The learned counsel for the respondent submitted that the Drug Inspector was properly appointed for the entire India as per the Gazette Notification, dated 03.11.2011, and he has also produced a copy of the notification in this regard. The learned counsel further submitted that all the procedures have been properly followed. He further submitted that, after receipt of one portion of the sample, the petitioners have not sent it for further testing as per the Act, within 28 days. Further, factual aspects cannot be gone into in this petition under Section 482 Cr.P.C. Therefore, this petition is liable to be dismissed.

6.Heard the learned counsel on either side and perused the entire materials available on record.

7.As indicated above, the charge against the petitioners herein, who are the manufacturers of drugs, is that the drug, namely, ISONIAZID Tablets IP 300 mg, is not upto the standards and quality, as per the report of the Government Analyst. The samples were lifted on 20.03.2013 by the Drug Inspector, namely, Mrs.P.Priyadharsini. On a perusal of the Gazette Notification produced before this Court, it is seen that she was appointed for the whole of India. The said notification, dated 03.11.2011, contains the name of the Drug Inspector, i.e., Mrs.P.Priyadharsini, who lifted the samples in case on hand. Therefore, the contention of the learned counsel for the petitioners that the Drug Inspector is not appointed for the specific area, has no relevance at all.

8.As per Section 23 of the Act, the Drug Inspector, after lifting the sample, shall divide the same into three or four and ensure that the samples are sealed, and after restoring one portion of the sample to the person from whom the sample was taken, another portion of the sample shall be forwarded to the Government Analyst for testing and the second portion of the sample shall be produced before the Court where the proceedings, if any, are to be instituted, and the third portion of the sample shall be sent to the person, if any, whose name, address and other particulars have been disclosed under section 18A. It is seen that the Drug Inspector has followed the above procedure. The main contention of the learned counsel for the petitioners is that the third sample was given to the petitioners only on 20.12.2013, i.e., after a period of nine months. It is to be noted that, only after receipt of the test



report, it appears that the Drug Inspector has issued notice to the distributor and only on receipt of reply notice from the distributor, they came to know about the details of the manufacturer and immediately thereafter, notice was sent to the manufacturer on 20.12.2013 along with a portion of the sample which was seized. It is also pertinent to note that the expiry date of the drug was in June, 2015, however, it is not the case of the petitioners that the sample was sent much after the expiry, so that their right to have a second opinion is lost. The petitioners, having received the sample, have not preferred to send the sample for second opinion to the Central Drugs Laboratory. The petitioners have not taken any steps to send the sample received by them for further testing, as provided under Section 25(3) of the Act, nor have they addressed to the Drugs Inspector about their intention to adduce evidence in controversion of the report. Therefore, now, the petitioners cannot complain of the procedural violation.

9.The accused herein are the company and its Directors. As per Section 34(2) of the Act, where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Therefore, the Directors of the company are also necessary parties to the proceedings.

10.Further, the judgment of the Bombay High Court relied upon by the learned counsel for the petitioners is in a Revision Case against the judgment delivered by the trial Court after full fledged trial and after appreciation of evidence available on record. Therefore, the same cannot be applied mechanically in this case, while dealing with a petition filed under Section 482 Cr.P.C.

11.In view of all the above, this Court is not inclined to quash the complaint and accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

12.At this juncture, the learned counsel appearing for the petitioners seeks indulgence of this Court to grant an order dispensing with the personal appearance of the petitioners. Accordingly, the personal appearance of the petitioners before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C.,



passing of judgment, or on any other date as may be required by the trial Court.

13. The trial Court shall decide the matter on its own merits without being influenced by the observations made by this Court.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. -do- through The Chief Judicial Magistrate,
Egmore, Chennai.
3. The Drugs Inspector,
Office of the Deputy Drugs Control,
South Zone,
2nd Floor Shastri Bhawan, Annex,
Chennai - 600 006.

+2ccs to M/s.Swaminathan Law Associates, Advocate, S.R.No.2371

+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.2568

Cr1.O.P.No.28410 of 2018

SS(CO)

RLP(07/02/2022)