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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10013-2016 (O&M)

Date of decision:09.02.2022

M/S RATCHET LABORATORIES LTD AND ANR

...Petitioners

Versus

STATE OF HARYANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Akshay Jain, Advocate
for the petitioners.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

CRM-1152-2022

1. Through the instant application, the applicants seek stay of proceedings before the learned trial Court, as arise from Complaint No.CHA/00900392/2011 dated 29.06.2011 and/or, for exempting the personal appearance of petitioner No.2-Manoj K. Vasudeva.

2. With the conjoint request of the counsel of both the parties concerned, the main case is taken up today.

Main case

1. Complaint bearing No. No.CHA/00900392/2011 dated 29.06.2011, titled as 'State of Haryana Versus M/s Ratchet Laboratories Ltd. and another' became instituted before the learned Chief Judicial Magistrate, Hisar. In the complaint (supra), the accused therein is alleged to commit an offence, punishable under Section 27 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act).

2. The learned CJM concerned, after assuming cognizance thereons, proceeded to order for issuance of summons, upon, the petitioner herein who became arrayed as co-accused No.1 in the complaint (supra). The complaint (supra), and, the above summoning order became challenged before this Court, by the petitioner(s) through institution of CRM-M-2235-2016. In the above case the relief claimed, was with respect to quashing of the complaint (supra), and, also for quashing of the summoning order (supra). However, the above petition was withdrawn on 21.01.2016, yet with a liberty to the aggrieved to approach the learned Addl. Sessions Judge concerned. The order, as made upon CRM-M-2235-2016, on 21.01.2016, is reproduced hereinafter.

“Learned counsel for the petitioners seeks to withdraw the present petition with liberty to challenge the summoning order dated 29.06.2011 (Annexure P-10) passed by learned Chief Judicial Magistrate, Hisar, before the Sessions court. It is claimed that the petitioners were served in December 2015.

It being so, the present petition is disposed of with liberty to the petitioners to approach the Sessions Court first against the aforesaid summoning order, where they can raise all the available pleas. It is further directed that if such revision is filed, the same shall be heard and decided on merits notwithstanding the technicalities of law of limitation.

3. Consequently, the learned Additional Sessions Judge, Hisar proceeded to, make an dis-affirmative adjudication, upon the petitioners' grievance appertaining to the validity of assumption of cognizance, and, also appertaining to the validity of issuance of summoning order, qua it, by the learned trial Judge concerned. The above order becomes impugned before this Court.

4. The gravamen of the arguments, as became addressed before the learned Additional Sessions Judge concerned, appertained to the legal infirmity

of the initial analysis, as made on 28.07.2008, upon the collected samples, whose collection occurred on 21.06.2007, pointedly given the apposite statutory bestowment becoming untenably not permitted to be availed by the petitioner. The initial analysis of the collected samples was made by the Government Analyst, Haryana, and, an intimation with respect to the makings thereons of analysis, by the Government Analyst, Haryana, was made on 05.08.2008, to one M/s Nectar Pharma arrayed, as co-respondent No.5 in the complaint (supra). However, it is not controverted amongst the counsels appearing before this Court, that the above entity inasmuch as, M/s Nectar Pharma, did not avail of the statutory leverage, as became bestowed upon it, through the mandate of Section 25(3) of the Act (supra), rather purportedly on the ground, that he is a retailer of the above collected samples, and, that the manufacturer thereof, is the aggrieved petitioner herein. Therefore, the above entity had claimed exculpation within the apposite therewith provisions engrafted in Section 18 of the Act. The provisions embodied in Section 25 of the Act (supra) are extracted hereinafter.

“25. Reports of Government Analysts.-(1) The Government Analyst to whom a sample of any drug [or cosmetic] has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken [and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken [or the person whose

name, address and other particulars have been disclosed under section 18A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug [or cosmetic] produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."

5. A candid mandate is encapsulated in sub-section 3 thereof, qua within 28 days of the receipt of the copy of the report of the analyst concerned, rather the owner of the retail outlet concerned, from where the sample concerned, became collected, becoming foisted with an indefeasible statutory right, to controvert the report, as initially made thereons, by the Government Analyst concerned, through his/its asking for its being resent for re-analysis, to some other laboratory concerned. As afore stated, the afore right remained un-availed by the M/s Nectar Pharma, from whose premises the apposite collections occurred, and, in whom the statutory empowerment/leverage embodied in sub-section 2, and, sub-section 3 of Section 25 rather becomes invested. At the outset, it is candidly obvious, that the collections did not occur from the

premises of the petitioner herein, rather uncontrovertedly the petitioner herein is the manufacturer of the apposite collections. *Prima-facie* hence within the domain of above statutory provisions, the petitioner herein could not claim any statutory privilege alike the one (supra), as, vested in the owner of the retail outlet concerned, from where the collections occurred.

6. Be that as it may, as stated above, the petitioner herein, is the manufacturer of the drug or the sample concerned, and, it also at par, with the retailer, in whom the statutory leverage, as, becomes embodied in sub-section 3 of Section 25 of the Act (supra), becomes foisted, rather claimed the purveying qua it, the above statutory leverage. For determining the tenacity of the afore claimed statutory availment by the manufacturer, it is important to detail the fact, that an intimation with respect to the making of the initial report, by the Government Analyst concerned, was given to the petitioner herein, on 28.01.2009, rather by the concerned. Therefore, assuming that the petitioner alike the retailer concerned, was entitled to the statutory benefit contemplated in sub-section 3 of the Act (supra), thereupon. It was to *prima-facie* demonstrate, that it within 28 days from receipt of the above intimation or from its making, rather intended to produce evidence to controvert the afore, initial report, as made by the Government Analyst, Hisar. The learned counsel for the petitioner submits, that even if assuming, that the letter with respect to the afore intimation, as became issued on 28.01.2009, to the petitioner, was received a couple of days thereafter, and, yet hence assuming, that it became received by the petitioner, on 31.01.2009. Therefore, the above date becomes the relevant date, from where the computation of 28 days, as embodied in sub-section 3 of Section 25 of the Act (supra), is to be made. Since before elapse of 28 days from 31.01.2009, through issuance of Annexure P-8, as drawn on 19.02.2009, the

petitioner asked for re-sending of the collected samples, for re-analysis to the Central Laboratory concerned. Consequently, the petitioner, within the ambit of sub-section 4 of Section 25 of the Act, (supra), hence promptly notified its intention to the concerned, for thereafter the Inspector concerned, making a motion before the learned Magistrate concerned, for the re-sending for re-analysis hence the collected samples, rather to the Central Laboratory concerned. The above expressed/notified desire was for adducing evidence in controversion to the report of the Government Analyst, Haryana, as initially made on the collected samples, and, was facilitative of making completely efficacious, the statutory right invested through sub-section 4 of Section 25 of the Act (supra), rather in the petitioner.

7. However, it appears that the above claimed statutory leverage, became not accorded to the petitioner through the impugned order, as made by the learned Additional Sessions Judge, Hisar on 09.03.2016, upon, Criminal Revision No.7 of 2016. The reason as meted in the impugned verdict (supra), by the learned Additional Sessions Judge, concerned is bedrocked, upon, a verdict made by the Hon'ble Supreme Court in *Amery Pharmaceuticals Versus State of Rajasthan 2001 (2) RCR (Criminal) 265.*

8. The learned counsel for the petitioners has vehemently argued, that the application of verdict (supra), by the learned Additional Sessions Judge, to the facts at hand, arises from a sheer misunderstanding of the *ratio decidendi*, as contained therein, therefore, applications thereof to the facts at hand becomes completely mis-founded. He has also most vehemently argued, that through the impugned verdict, the learned Additional Sessions Judge concerned, has even gone to the extent of recording, that the above mis-striving of the petitioner also working towards its becoming denied a right to avail any valid defence, as may

ensue, from Annexure P-8, for its/his hence earning an acquittal qua the charges, as are framed or may become framed by the learned trial Judge concerned, against the petitioners. For determining the validity of the afore made submissions, it is important to read the relevant expostulations of law, as made, by the Hon'ble Apex Court in judgment (supra). Though, in judgment (supra) the Hon'ble Apex Court, though has made an expostulation of law that though, the manufacturer is not alike the retailer, entitled as a right, to get the report of the Government Analyst concerned, and, has also proceeded to, thereafter make a conclusion, that the statutory benefit conferred, upon the retailer through the mandate of sub-section 3 of Section 25 of the Act (supra), is not available to the manufacturer, of the drug or cosmetic concerned.

9. However, the Hon'ble Apex Court in paragraph 25 of the judgment (supra), para whereof becomes extracted hereinafter, has yet proceeded to record conclusions, that though, the manufacturer concerned, may not be entitled to be supplied with a copy of the initial report of the Government Analyst concerned, yet the manufacturer must become the recipient of the apposite report, to enable it, to challenge the correctness of the facts stated in the report concerned, by resorting to any other mode by which such facts, as occurring in the initially made report, can become disproved. Moreover, it is also expostulated therein, that the manufacturer can also avail the remedy, as available in sub-section 4 of Section 25 of the Act (supra).

“25. In our view the court should lean to an interpretation as would avert the consequences of depriving an accused of any remedy against such evidence. He must have the right to disprove or controvert the facts stated in such a document at least at the first tier. It is possible to interpret the provisions in such a way as to make a remedy available to him. When so interpreted the position is thus: the conclusiveness meant in [section 25\(3\)](#) of the Act need

be read in juxtaposition with the persons referred to in the sub-section. In other words, if any of the persons who receives a copy of the report of the Government Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Government Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the Government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other modes by which such facts can be disproved. He can also avail himself of the remedy indicated in sub-section (4) of [Section 25](#) of the Act by requesting the court to send the other portion of the sample remaining in the court to be tested at the Central Drugs Laboratory. Of course, no court is under a compulsion to cause the said sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in [Section 25\(4\)](#) of the Act is produced in court the conclusiveness mentioned in that sub-section would become incontrovertible.”

10. However, it is also mentioned therein, that the attempt of the manufacturer to recourse the mandate of sub-section 4 of Section 25 of the Act (supra), cannot become *ipso-facto* accorded to it, by the learned Court concerned, especially if the request is made after a long delay. Consequently, it has to be determined within the ambit of paragraph 25 of the judgment (supra), whether the attempt of the manufacturer to recourse the mandate of sub-section 4 of Section 25 of the Act (supra), rather is evidently belated. Nowat irrespective of the manufacturer not *per-se* becoming entitled to receive the initially made

report by the State Analyst concerned, hence on the collected samples, yet with its being given an intimation with respect to the making of the initial report concerned, by the Government Analyst concerned, hence on 31.01.2009 ,and, also with its in quick promptitude therefrom, inasmuch as, it within less than two weeks thereafter, rather on 19.02.2009, through Annexure P-8 asking the Drugs Inspector for the retesting of the sample concerned, or re-analysis of the sample concerned, by the Central Drugs Laboratory, Calcutta. Consequently, it appears that the aggrieved-petitioner, had not made any inordinate delay, in its attempting to recourse the mandate of sub-section 4 of Section 25 of the Act (supra), especially when in respect of availment by the petitioner of the mandate (supra), the Hon'ble Apex Court has reserved a right in the manufacturer, yet with the rider that it being promptly re-coursed. Therefore, it was grossly inapt for the learned Sessions Judge, Hisar to proceed, to as correctly submitted by the learned counsel for the petitioner, to mis-understand the ratio of the verdict, as, propounded, by the Hon'ble Apex Court, in verdict (supra), and, also he makes a correct submission before this Court, that the benefit as bestowed upon the petitioner, through paragraph 24 of the judgment (supra), hence by the Hon'ble Apex Court, has been both grossly mis-understood, and, also has been grossly mis-applied. Furthermore, he has made a correct submission even to the extent, that the learned Additional Sessions Judge concerned, has proceeded to untenably completely forestall the rights in defence, as may arise therefrom, to the aggrieved-petitioner. Therefore, this Court though agrees with the above made submissions before this Court by the learned counsel for the petitioner. However, neither this Court nor the learned trial Judge concerned, can make any valid order for re-analysis being made of the collected sample, hence by the Central Drugs Laboratory concerned, as the afore endeavour though, was

promptly made by the aggrieved-petitioner before the Drugs Inspector concerned, yet it remained not thereafter promptly re-coursed in terms of sub-section 4 of Section 25 of the Act (supra), before the learned Chief Judicial Magistrate concerned, either by the petitioner, and/or, by the Drugs Inspector concerned. The sequel thereof being, that the immense period of time, as has elapsed since 19.02.2009 until now, may beget the ill-consequence of deteriorations of the sample concerned, rather occurring, hence making it un-amenable for its efficacious re-testing being done by the Central Drugs Laboratory, Calcutta. Conspicuously also the mandate of sub-section 4 is to be re-coursed through the aegis of the learned trial Court concerned, and, also requires the makings of lawful orders thereons, by the learned Magistrate concerned. Therefore, too the above deterioration may not capacitate this Court or the learned trial Judge to order for apposite re-testings.

11. Be that as it may, the effect of the sample concerned, expiring on 31.01.2009, does also assume utmost importance. The reason being that irrespective of the fact, that the aggrieved-petitioner strived to make a prompt availment of the statutory right vested in it, under sub-section 4 of Section 25 of the Act (supra), yet the reanalysis of the sample concerned, through the aegis of the learned trial Court concerned, by the Central Laboratory concerned, would become a completely futile attempt, to either rid of efficacy the initially made report by the Government Analyst concerned, or to hence through the above mode rather a valid controversion thereof hence emanating, from the laboratory concerned. The reason being that the apposite re-analysis would be a valid endeavour, only when the sample concerned, was still open to re-analysis inasmuch as, it had not expired. However, if the sample concerned, had expired, thereupon, there would be no valid re-analysis thereof, by the Central

Laboratory, nor the petitioner would become validly entitled to efficaciously avail the statutory leverage foisted in it through sub-section 4 of Section 25 of the Act (supra), nor would his/it would become capacitated to earn an acquittal despite a valid statutory right becoming vested in it, and, it being for reasons (supra), being tacitly through, indolence of the Drugs Inspector concerned, permitted to become maimed. Therefore, the prayer made before this Court for the quashing of the complaint against the manufacturer, on the ground, that the apposite re-analysis rather for ensuring, the eruption of an efficacious controversion to, the initially made report, by the Government Analyst, Haryana, would be a futile endeavour, and, also that the complaint deserves to be quashed, becomes amenable for acceptance, as it becomes completely supported by a judgment, as, made by Hon'ble Apex Court in case titled as **Medicamen Biotech Limited Versus Subina Bose (2008) 7 SCC 196**, the relevant paragraph 18 whereof, becomes extracted hereinafter. Conspicuously also when from the above evident facts, the putting to trial the petitioner(s), would result in its/his becoming unnecessary harassed and humiliated.

“18. In Unique Farmaids's case (supra) which was a case under the Insecticides Act which has provisions analogous to Section 25 (4) of the Act, the court found that the accused had indeed made a request to the Inspector for sending the sample for re-testing within the prescribed time limit and as this request had not been accepted an important right given to an accused had been rendered ineffective on which the proceedings could be quashed. This is what the Court had to say: (SCC p. 197, paras 12-13)

"12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticides Analyst shall be evidence of the facts stated therein and shall be conclusive

evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticides Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence.

13. In these circumstances, the High Court was right in concluding that it will be an abuse of the process of the court if the prosecution is continued against the respondents, the accused persons. The High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals."

We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for re-analysis. The observations in Amery Pharmaceuticals's case (supra) are also to the same effect. We find that the aforesaid interpretation supports the case of the appellants inasmuch they had been deprived of the right to have the fourth sample tested from the Central Drugs Laboratory. It is also clear that the complaint had been filed on the 2-7-2002 which is about a month short of the expiry date of the drug and as such had the accused appellant appeared before the Magistrate even on 2-7-2002 it would have been well nigh impossible to get the sample tested before its expiry."

12. The above view has also been reiterated by the Hon'ble Apex Court in case titled as *M/s Brawn Laboratories Versus State of Jammu & Kashmir as made upon Criminal Appeal No.674 of 2017*, relevant paragraph 6 whereof stands extracted hereinafter.

“6. We do not see how in the aforesaid facts the High Court could have left the matter to be decided in the trial. Compliance with the requirement under Section 25(4) of the 1940 Act had been made by the appellant by addressing the letter dated 27th February, 2010. From the order of the learned Chief Judicial Magistrate, Jammu dated 7th May, 2011 it is clear and evident that the sample had not been received by the Central Drugs Laboratory, Calcutta. In these circumstances one can reasonably understand that the valuable right of reanalysis vested in the appellant under Section 25(4) of the 1940 Act has been denied to him and the prosecution on the materials available was bound to be a lame prosecution. The High Court, therefore, ought to have quashed the proceedings. The same not having been done, we are of the view that the present is a fit case where we ought to interfere and quash the criminal proceedings against the appellant. We order accordingly.”

13. Consequently, the instant petition is allowed. The complaint (supra), and, the summoning order of 29.06.2011 besides order of 09.03.2016 passed by learned Additional Sessions Judge, Hisar are all quashed, and, set aside.

14. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

09.02.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No