

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

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CRR-1289-2022

DECIDED ON: 8th SEPTEMBER, 2022

PUNEET SHARMA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Dr. Surya Parkash, Advocate
for the petitioner.

SANDEEP MOUDGIL, J. (ORAL)

The instant petition has been filed raising a challenge to the order dated 23.01.2020 whereby the Additional Sessions Judge, Rupnagar has charge sheeted the petitioner under Section 18(a)(i) and under Section 27(c) of the Drugs and Cosmetics Act, 1940 (hereinafter to referred to as ‘the Act of 1940’).

Brief facts of the case are that on 08.07.2015, the respondent, through its Drug Inspector, Rupnagar collected samples of “HP-LON Depot 750 Injection (Veterinary) Batch No. 771405 manufactured on 03/14 with date of expiry-02/17, manufactured by M/s Macin Remedies India Limited, B-21, 412001” for the purposes of test and analysis and issued Form 17 in this regard. It is alleged that the drug samples were sent for analysis by the District Drug Inspector, Rupnagar to the Government Analyst, Punjab, Chandigarh on 08.07.2015, itself. The report of the said Analyst was given on 20.07.2015, which was forwarded to District Drug Inspector, Rupnagar for further analysis. As per the report, the sample referred to above is not of

standard quality as defined in the Drugs and Cosmetics Act, 1940 and Rules thereunder.

Learned counsel for the petitioner has submitted that the petitioner is a licensed wholesale drug dealer and he deals in drugs after getting the license from the competent authority since 2006 and at no point of time, the petitioner has ever indulged in any activity which is violative of provisions of the Act of 1940. It is further submitted that on 08.07.2015, the respondent through its Drug Inspector, Rupnagar collected samples of “HP-LON DEPO 750 Injection (Veterinary) Batch No.771405 manufactured on 03/14 by M/s Macin Remedies India Limited, B-21, 412001 with expiry date of 02/17 and issued Form 17 (Annexure P-2) in this regard. The samples were sent for analysis to the Government Analyst, Punjab, Chandigarh on 08.07.2015 vide Form 18 (Annexure P-3). The report of Government Analyst was received on 20.07.2015 (Annexure P-4) vide which the samples were declared to be not of standard quality. It is further submitted that the vide communication dated 23.07.2015, District Drug Inspector, Rupnagar asked Mr. Manoj Kumar, Proprietor of M/s Bansal Medical Store, Ropar Road, Kurali to disclose the source of the drug; whereupon the said Manoj Kumar disclosed the name of the petitioner-firm. Thereafter, on 11.08.2015, the Drug Inspector wrote to the petitioner-firm directing to stop the sale of the aforesaid drug and also to disclose the name of supplier from whom he (petitioner) had purchased the said drugs. In response thereto, the petitioner stopped the sale of the said drug with immediate effect and also directed the retail dealers under him not to sell the said drug further. The petitioner also informed the District Drug Inspector that the abovesaid drug was purchased by the petitioner from Macin Remedies India Ltd. However, vide its communication dated 30.12.2015, the manufacturer i.e. M/s Macin Remedies

India Ltd. informed the Drug Inspector that the said drug did not belong to them, rather they were manufacturing Hydroxyprogesterone Caproate Injection IP under the brand name of HP LON 250 mg/ml. Thereafter, the Drug Inspector did not investigate the matter any further and filed a complaint dated 13.07.2016 in the Court of Chief Judicial Magistrate, Rupnagar against the retailers, Manoj Kumar, the petitioner and the Managing Director of Machin Remedies India Ltd. as well as the M/s Machin Remedies India Ltd. after getting the prosecution order from the State Drugs Controlling and Licensing Authority under Section 18(a) (i) of the Act of 1940. Thereafter, the petitioner moved an application for discharge of the petitioner alleging that he is an authorized and licensed Drug Wholesale dealer and he had acquired the drug from a duly licensed manufacturer i.e. M/s Machin Remedies India Ltd. The petitioner also supported the application with all relevant documents/bills etc. However, learned Additional Sessions Judge, Rupnagar dismissed the application of the petitioner vide order dated 16.12.2019 and pursuant thereto, charges have been framed against the petitioner as well as other accused persons under Section 18(a) punishable under Section 27(c) of the Act of 1940 vide order dated 23.01.2020. It is further submitted that the complaint as well as order of dismissal of application dated 16.12.2019 are against the provisions of Section 19(3) of the Act of 1940 as it is quite undisputed that the petitioner is a licensed wholesale drug dealer and he had purchased the aforesaid drug from a duly licensed manufacturer i.e. M/s Macin Remedies India Ltd. Counsel further submits that it is also not the case of the prosecution that the petitioner was having any knowledge about the drugs being not of standard quality and in contraventions of the provisions of the Drug Act. Further it is also not the case of the prosecution that the drug was not stored by the

petitioner in a proper manner and was retained in the same state/position as it was purchased. It is further submitted that in view of the above, no complaint is maintainable under Section 19(3) of the Act. It is further submitted that even otherwise, there is no role of the petitioner in the entire episode because it is only the manufacturer who is responsible for the non-standardization/sub-standardization of the drug and not the retail seller.

Heard learned counsel for the petitioner at length and have gone through the material available on record with his able assistance.

The only grievance of the petitioner is against the order dated 23.01.2020 vide which he has been charge sheeted under Section 18(a) punishable under Section 27(c) of the Act of 1940 by the Additional Sessions Judge, Rupnagar. The main submission of the learned counsel for the petitioner is that as the petitioner is a licensed wholesale drug dealer and has no concern with the manufacturing of the drug or its standardization, he could not have at all been charge sheeted.

At the outset, this Court would like to point out that charge is framed against any person only if there is a prima facie case made out against such person, and at the same time, it is not a final conclusion drawn by the Court concerned to convict the accused. The charges framed against the accused are required to be proved during trial beyond shadow of all reasonable doubts by leading cogent and convincing evidence by prosecution. If the prosecution succeeds in proving its case, only then the accused is liable to be convicted, otherwise, he acquires acquittal from the Court.

As far as the arguments raised by the learned counsel for the petitioner are concerned, this Court is of the considered opinion that the same are matter of merits of the case. At the stage of framing of charge, Court concerned has to see only the prima facie case against the accused concerned.

The petitioner would be afforded due and proper opportunity to rebut the case of the prosecution by leading defence evidence. At that stage only, the arguments of the petitioner would be relevant.

Furthermore, it is the own case of the petitioner that the learned Addl. Sessions Judge, Rupnagar has dismissed the application of the petitioner for his discharge while holding that whether or not the petitioner is entitled to take the plea under Section 19(3) of the Act of 1940 is a matter to be decided during the trial and that such plea is to be considered and proved during trial. At this stage before the High Court, the petitioner is required to point out any illegality, impropriety or perversity in the order so passed by the trial Court. He has to point out that as to how and in what manner, the order passed by the trial Court is bad in law. The merits and/or demerits of the case cannot be gone into at this stage. Consequently, this Court is of the considered opinion that the instant petition is devoid of merits.

Dismissed accordingly.

8th SEPTEMBER, 2022
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No