

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3030 of 2009

DR. SATINDER PAL SINGH BAKSHI

@ DR. SUNNY BAKSHI

@ DR. S.P.S. BAKSHI & ANR.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. S. Mitter, Adv.
Mr. K. Bapuli, Adv.

For the State : Mr. Narayan Prasad Agarwala, Adv.
Mr. Pratick Bose, Adv.

Hearing concluded on : 22nd September, 2023

Judgement on : 13th October, 2023

Siddhartha Roy Chowdhury, J.:

1. This petition under consideration challenges the legality of the proceeding being case no. C/10949/05 for violation of Section 18(a)(i), 18(a)(iii), 18(b) 18(c) read with Section 17, 17A, 17B and Rule 106-A and Section 18A read with Section 24 and punishable under Section 27 and 28 of the Drugs and Cosmetics Act, 1940 and the rules framed thereunder which arose out of Shakespeare Sarani P.S. Case No. 128 dated 20th April 2005 corresponding to G.R. Case No. 932/2005, pending before the learned 12th Court of Metropolitan Magistrate Calcutta, together with order dated 18th May 2009 passed by learned 12th Court of Metropolitan Magistrate in case no.

C/10949/05 thereby rejecting the prayer of the petitioners under Section 245(2) of the Code of Criminal Procedure.

2. Briefly stated, the petitioner no. 1 Dr. Satinder Pal Singh Bakshi @ Dr. Sunny Bakshi @ Dr. S.P.S. Bakshi is a renowned homeopath doctor who runs several homeopathic clinics in the country managed by renowned homeopathic practitioners of the local area. M/s Bakson's Homeopathic Centre for Allergy is one such clinic in Kolkata, run by the petitioner no. 1 and the clinic is managed by registered homeopathic practitioners including Dr. Kuntal Mukherjee.
3. One Gobindo Lal Bhattacharjee Senior Inspector of Drugs, Government of West Bengal, Directorate of Drugs Control on 20th April, 2005 informed the Officer-in-charge of Shakespeare Sarani Police Station stating, *inter alia*, that on 20th April, 2005 at about 3.00 p.m. he along with Sri A.K. Roy, Deputy Director, Drug Control, Dr. S.C. De, Assistant Director of Drug Control and some other persons had been to the premises situated at 2nd floor of 31, Shakespeare Sarani of M/s Bakson's Homeopathic Centre for Allergy to hold an enquiry. During enquiry the person present was asked to produce relevant documents regarding selling and manufacturing of homeopathic medicine to the public through cash memo. That apart it was found that without having manufacturing licenses, the company was manufacturing misbranded and unlabelled medicine. A huge block of medicines without proper labelling were found together with instruments for the blister packing of medicine, along with empty strips. On further enquiry it was found that the strips

contained tablets and bottle containing medicines did not bear the labels properly as the attributes of labeling provisions were not mentioned on the label. It further appeared that the medicines were spurious. Samples were drawn for the purpose of test and analysis. On the basis of such information Shakespeare Sarani P.S. Case No. 128 dated 20th April 2005 was registered under the Drugs and Cosmetics Act, 1940.

4. However, after a full-fledged investigation was done by Shakespeare police station, on 16th November 2005, Krishnango Bhattacharya, Inspector of Drug, Government of West Bengal filed a petition of complaint before the learned 12th Court of Metropolitan Magistrate against Dr. Arnab Sarkar, M/s Bakson's Homeopathic Centre and the petitioners, which was registered as C/10949/05.
5. On 23rd November 2005, learned Magistrate was pleased to take cognizance and was further pleased to tag the documents collected in course of police investigation. During the investigation, the report of the government analyst was forwarded by the complainant to the petitioners on 20th June 2005 and in response to that notice, the petitioners through Dr. Arnab Sarkar, on 9th July 2005 filed an application before the drug Inspector, directorate of drug control, in terms of Section 25(3) of the Act, for having the seized drugs retested by the Central drug laboratory. The said application was received by the office of the Drug Inspector on 11th July, 2005 but no effort was made to comply with the said statutory provision of law for examination of the said article by the Central drug laboratory. The

petitioner states that the rule 123 framed under the Act provides for exemption to the drugs specified in schedule K from the ambit of Chapter 4 of the Act that deals with manufacture, sale and distribution of drugs and cosmetics. Clause 31 of Schedule K of the rule is related to the homeopathic medicine and, therefore, dispensing with homeopathic medicine by a registered homeopathic practitioner cannot tantamount of an offence within the meaning of the said Act.

6. Mr. Sekhar Kumar Basu, learned Senior Counsel representing the petitioner, drawing my attention to Section 32 of the Drugs and Cosmetics Act submits that in the present case police was informed by the Senior Inspector of Drugs and Shakespeare Sarani P.S. Case No. 128 dated 20th April, 2005 was registered. Police held investigation which is contrary to the law laid down under Section 32 of the Drugs and Cosmetics Act, 1940. To buttress his points Mr. Basu relied upon the judgement of Hon'ble Apex Court pronounced in the case of ***Union of India vs. Ashok Kumar Sharma*** reported in **(2023) 1 SCC Cri 565**. In the said judgement Hon'ble Apex Court held that in regard to the cognizable offences under Chapter 4 of the Drugs and Cosmetics Act, in view of Section 32 of the Act and also the scheme of Cr.P.C., police officer cannot prosecute the offenders and only the persons mentioned in Section 32 of the Act can prosecute the offenders. It is further contended that the complainant refused to comply with the provision of Section 25 (3) of the Drugs and Cosmetics Act, 1940 and thus deprived the petitioners of their benefit to get the report of public analyst challenged and thus to

rebut the probative value of such report of government analyst by adducing evidence, although within 21 days Dr. Arnab Sarkar on behalf of the Firm wrote a letter to the drug controller.

7. Section 32 and in particular the West Bengal Amendment says:-

“32. Cognizance of offences and arrest without warrant. – (1) All offences punishable under this Act shall be cognizable and non-bailable.

(2) Any police officer not below the rank of a Sub-Inspector of Police may arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having been concerned in any of the offences punishable under this Act.” [W.B. Act 42 of 1973, Section 5]

Therefore, in view of the aforesaid provision of law, which was in force till Central Amendment Act was given effect to on and from 10th August, 2009.

8. Therefore, in view of the said Amendment police officer not below the rank of Sub-Inspector can arrest any person without warrant for causing infraction to the statutory provision. Therefore, learned Trial Court had no reason to take cognizance of the offence on the basis of a petition of complaint, filed subsequently after police swung into action and started investigation.

9. Section 25 of the Drugs and Cosmetics Act, 1940 enunciates:-

“Section 25 in the Drugs and Cosmetics Act, 1940

25 Reports of Government Analysts. —

(1) The Government Analyst to whom a sample of any drug ¹¹⁶ [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 ¹¹⁷ [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 ¹¹⁸ [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 ¹¹⁶ [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.”

10. Sub-Section 3 of the said Act unambiguously envisages that the report of the government analyst shall be evidence of the fact stated therein which would be conclusive in nature unless the person from

whom the sample was taken or the person whose name and address and other particulars have been disclosed under Section 18-A has within 28 days of receipt of a copy of the report, notified in writing the Inspector or the Court that he intends to adduce evidence in controversion of the report. In that event the petitioner would have had an opportunity to get the sample tested by the Director of Central Drug Laboratory.

11. My attention is drawn to the copy of the letter annexure P3 written by Dr. Arnab Sarkar as an authorized signatory Bakson's Homeopathic Centre for Allergy on 9th July, 2005. In the concluding paragraph of the letter it was stated that "However, the report of Govt. analyst is not acceptable since no homeopathic medicine containing prednisolone had been added in the disputed compounded medicine and also it is known to all that lactose present in globules is known to give false test for steroid. The drug should be re-tested from the appellate lab either by HPLC or HPTLC method. The testing must be done on blank globules also for ascertaining the truth."
12. In my humble opinion, this letter was written within the prescribed time period of 28 days, controverting the accuracy of the report of the Government Analyst but the same was not sent for re-testing and thus the petitioner was deprived of valuable right conferred under Section 25 of the Act. In this regard we can profitably rely upon the judgement of Hon'ble Apex Court in ***M/S MEDICAMEN BIOTECH LIMITED & ANR. VS. RUBINA BOSE, DRUG INSPECTOR*** reported in **AIR 2008 SC 1939** wherein it is held :-

“10..... We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why the complaint could not have been filed earlier and the fourth sample sent for retesting well within time. We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right under [Section 25\(3\)](#) and [25\(4\)](#) of the Act which must necessitate the quashing of the proceedings against them.”

13. Upon perusal of record, I find that the police filed final report after investigation and a petition of complaint was also filed by the Inspector of Drugs, Director of Drug Controller under Section 32 of the Act and learned Trial Court was pleased to take cognizance and gave precedence to the petition of complaint over the report submitted by police and the case is now pending before the learned Magistrate as Complaint Case No. 10949 of 2005. Learned Magistrate could not have taken cognizance in the breach of Section 32 of the Act (W.B. Amendment).
14. Under such circumstances, I am of the view that the proceeding pending before the learned Trial Court manifests abuse of process of law and as such the same should be quashed, which I accordingly do.

15. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
16. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)