

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3306 OF 2022

1. M/s. M. G. Pharmaceuticals,
Village : Kumarhatti; Tahsil & District : Solan-173229
(Himachal Pradesh)
2. Amitkumar s/o Amritlal Mittal
Age : 43 years, Occupation : Business
Resident of : Neelkanth Bhavan,
Housing Board Colony, Saproon, Solan – 173211
(Himachal Pradesh) ... APPLICANTS

VERSUS

The State of Maharashtra
Through Shri Vilas S/o Vishvanath Dusane,
Drugs Inspector, Beed
Food and Drug Administration, Maharashtra State,
Shahunagar, Pangri Road, Beed
Taluka & District Beed ... RESPONDENT

Mr. A. A. Yadkikar, Advocate for the applicants
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 09/08/2023
PRONOUNCED ON : 18/08/2023

ORDER :-

1. This application is filed under Section 482 of the Code of Criminal Procedure seeking quashment of Sessions Case No. 98 of 2022 pending on the file of Addl. Sessions Judge, Ambajogai, Dist. Beed for the offences punishable under Sections 16, 18 (a)(i), 18B, 22(CCA), 27(d), 28A and 34 of the Drugs Cosmetics Act, 1940 (for short 'Act').

2. The facts which led to filing of present application can be narrated in short as under:

(a) Applicant No.1 is a partnership firm and is in the business of manufacturing and marketing for sale of Pharmaceutical Formulations, Drugs and Medicines and held a Drug Manufacturing License granted on 01/08/2007 which was valid up to 31/07/2012. Applicant No.2 is a partner of the applicant No.1 firm which was created vide a deed of partnership effective from 24/06/2008. On 14/07/2010 respondent/complainant visited the premises of M/s Chaitali Agencies situated at Parli Vaijnath, District Beed and drew sample of 4x1x200 ml XT-Zyme Digest Enzyme Mfg. Lic No. MNB/07/597, MB/07/598, Batch No. MG-10100, Mfg. date April, 2010 and expiry date June, 2011 manufactured by Allensmith Lab, Farmaceuticos Division India, Solan, Himachal Pradesh. On 15/07/2010 complainant sent one seized part of the sample to the Government Analyst, Maharashtra for test under memorandum in form No. 18 by registered post parcel. On 19/10/2010 the complainant received certificate of test of analysis by the Government Analyst dated 08/10/2010 stating that the sample sent on 15/07/2010 is not of standard quality. The complainant conducted further investigation and upon completion of investigation complaint being S.C.C. No. 240 of 2011 came to be filed against the applicants before JMFC, Parali. Learned Magistrate took cognizance of the offence and issued process against the applicants by order dated 16/06/2014. Since by virtue of

amendment the complaint would lie with the Special Judge of the designation of a Sessions Judge, on 04/07/2022 order of committal was passed and the proceeding was numbered as Sessions Case No. 98/2022.

3. Learned counsel for the applicants submits that there is non compliance of the mandatory provisions of Section 23(4) and Section 25 of the Act. By referring to the dates and events he sought to be argued that the drug which was drawn from M/s Chaitali Agencies on 14/07/2010 had shelf life up to June, 2011. It is contended that the complaint was filed before JMFC on 26/05/2011 and notice of the said proceeding was issued by order dated 16/06/2014. It is thus clear that the applicants were denied of the right to challenge the report of the Government Analyst as after the expiry of the shelf life of the drug, notice of the Court came to be issued. To support his submission he placed reliance on ***Laborate Pharmaceuticals India Ltd. And Ors. Vs. State of Tamil Nadu, MANU/SC/0743/2017***. In order to submit that the provisions of Act are mandatory in nature and in the instant case the delay in filing of the complaint is fatal to the case of prosecution, he placed reliance on ***Medipol Pharmaceutical India Pvt. Ltd. Vs. Post Graduate Institute of Medical Education & Research and Ors., MANU/SC/0585/2020, Ajeet Seeds Ltd. And Ors. Vs. The State of Maharashtra and Ors.,***

MANU/MH/2880/2017, M.R. Wani and Ors. Vs. The State of Maharashtra and Ors., MANU/MH/1401/2023, Laborate Pharmaceutical India Ltd., Vs. State of J & K and Ors., MANU/JK/0079/2021, Drugs Inspector Vs. Chimanlal and Co. and Ors., MANU/MP/0064/1968.

4. Learned APP opposed the said contention by submitting that the provisions of Section 25(3) of the Act is mandatory and unless objection is raised by applicants to the report of Government Analyst within 28 days of the receipt of the copy of report, it is not open for the applicants to challenge the said report as the same has become conclusive. To buttress his submission he placed reliance on the order of this Court passed in **Criminal Writ Petition No. 342/2023** in **M/s Theon Pharmaceuticals Limited Versus State of Maharashtra**.

5. There is no denial of the fact that the provisions of Section 23(4) of the Act are mandatory in nature. The Drug Inspector is required to comply with the same after drawing of the samples. He is required to forward forthwith one sample to the Government Analyst and the one of the part of the sample is required to be sent to the person from whom the seizure has been done. It further contemplates that sample is also required to send to the person who is named in an inquiry under Section 18A of the Act. Here in this case, undisputedly applicant No.1 is

disclosed under Section 18A of the Act. The said fact gets corroborated by the Act of complainant of sending one portion of the sample to applicants on 25/04/2011. There is further no denial of the fact that the applicants herein had sought to challenge the report of the Government Analyst after receipt of the sample from the complainant and that the said request is refused on the ground that no objection has been raised within 28 days of the receipt of the report.

6. In case of ***Laborate has shelf life up toPharmaceutical India Ltd. And Ors Vs. State of Tamil Nadu*** (supra) the Hon'ble Apex Court was dealing with the similar situation wherein report was not taken exception to within 28 days of the receipt thereof and the request made further reanalysis was rejected on that ground. While appreciating these facts in the context of the relevant provisions of the Act it is observed that when the part of the sample was not sent to the manufacturer, the manufacturer could not have got the same analyzed even if he wanted to do so and therefore it was not in a position to contest the findings of the Government Analyst. Finally it is held that the valuable right of the Appellant to have the sample analyzed in the Central laboratory has been denied by a series of defaults committed by the prosecution. In this set of facts the said prosecution was not allowed to be continued.

7. In the instant case too the shelf life of the seized drug was to

expire in June, 2011. Though the report of the Government Analyst was sent to the applicants immediately but the sample was not forwarded. It came to be forwarded in the month of May, 2011 i.e. just before few days of the expiry of the shelf life of the drug in question. Further, though the proceeding was instituted on 26/05/2011, but the process came to be issued against accused only on 16/06/2014, which is much after the shelf life of the drug expired. Here in this case applicants had asked for reanalysis of the sample received from the complainant but the said request was refused on the ground that it was made beyond 28 days. Thus the judgment of ***Laborate has shelf life up to Pharmaceutical India Ltd. And Ors Vs. State of Tamil Nadu*** (supra) squarely applies to the facts of this case and also directly covers the issue involved therein.

8. As far as the judgment of this Court in case of ***Theon Pharmaceuticals Limited Versus State of Maharashtra*** (supra) relied upon by learned APP, in the said case at no point of time any challenge was raised to the report by the applicants therein and hence it was held that the report has become conclusive and the same was not challenged within 28 days. In that case neither sample was not sent to the applicants nor the applicant therein was person whose name was disclosed in the inquiry under Section 18A of the Act. Similarly applicants therein did not call upon the Drug Inspector to provide the

sample for reanalysis. Hence the facts prevailing in the said case totally differs than the one involved in the instant case. Prosecution therefore cannot seek any help by the said judgment. Hence in view of above discussion proceeding initiated against applicants cannot be permitted to continued. In the result application is allowed in terms of prayer clause (C).

(R. M. JOSHI, J.)

ssp