2023:PHHC:133941

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **CRM-M-35197-2017 (O&M)**
Reserved on 05.10.2023
Pronounced on: 10.10.2023

M/s G.S. Pharmaceuticals Pvt. Ltd. and another .....Petitioners

Versus

State through Drug Inspector, Amritsar .....Respondent

(2) **CRM-M-36292-2017 (O&M)**
Reserved on 05.10.2023
Pronounced on: 10.10.2023

M/s Workhardt Ltd. and another .....Petitioners

Versus

State of Punjab through Drugs Inspector, Amritsar .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Suman Jain, Advocate
for the petitioners (CRM-M-35197-2017).

Mr. Himanshu Gupta and Mayank Garg, Advocates
for the petitioners (in CRM-M-36292-2017).

Mr. Pankaj Khullar, AAG, Punjab.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of the above two petitions as they both arise out of the same complaint and summoning order, coupled with the questions of facts and law therein involved are identical.

2. The petitioners in CRM-M-35917-2017 is the Manufacturing Company/manufacturers (hereinafter referred to as 'Manufacturing Company') of the drugs specified in schedule-C of the Drugs and Cosmetics Rules, 1945 whereas petitioners in CRM-M-

36292-2017 is the marketing company (hereinafter referred to as 'Marketing Company') and its competent person who were dealing in sale and purchase of Life saving drugs and medicines under the Drugs and Cosmetics Act, 1940.

3. The petitioners are seeking quashing of Complaint No.06 dated 06.01.2017 titled as 'State through Drugs Inspector, Amritsar Vs. Balwinder Singh and others' under Sections 18(a)(vi) punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act') and of summoning order dated 06.01.2017 along with all subsequent proceedings arising therefrom, qua the petitioners. For the sake of convenience, the facts are being taken from CRM-M-35917-2017.

4. Before proceeding further, the complaint (Annexure P/11) is being reproduced as under:-

> *"1. That the complainant, Sh. Amarpal Singh Malhi, Sh. Navdeep Singh, Ms. Anupama Kalia, Ms. Sudha Dehal are notified as inspector under Section 21 of Drugs & Cosmetics Act, 1940 vide Punjab Govt. gazette notification dated 21.10.2011. Attested copy of said notification is attached as Annexure A.*
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> *2. That the complainant Bableen Kaur, Drugs Inspector is also notified as Assistant Public Prosecutor (Ex-officio) vide Punjab Govt. Gazette Notification No. 2/147/11-3C6/5332 dated 21/10/2011, attested photocopy of which is attached as Annexure B.*
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> *3. That Sh. Sukhdeep Singh and Ms. Rupinder Kaur Bhambar are notified as inspector under Section 21 of Drugs & Cosmetics Act, 1940 vide Punjab Govt. Gazette Notification dated 12.04.2012. Attested copy of said notification is attached as Annexure B/1.*
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> *4. That on dated 30/08/2013,Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar-IV inspected M/s Boparai Medical Store, Village Boparai, Tehsil Baba Bakala, District Amritsar where accused Balwinder Singh was present as partner and incharge of the firm. Firm M/s*

Boparai Medical Store, Vllage Boparai, Tehsil Baba Bakala, was holding retail sale drugs license No. 20/27370 NB and 21/27370/B, granted on 09/07/2010, valid upto 08/07/2015. Attested copy of Form 20, 21 is attached as Annexure C1, C/2.

5. That during inspection S. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar-IV showed his intention to take drug samples for test and analysis and mentioned drugs stocked for sale and distribution in the shop sale premises of accused Balwinder Singh were drawn on Form 17 for Test and Analysis as per the provisions of Drugs & Cosmetics Act, 1940.

1. Sample No. ASR/AS/ 38/2013 of four portions (4x2x15) of Tab Aciloc- 150, B.No. 13241, Mfg. date: July 2013, Exp. Date: Dec. 2015, Manufactured by Cadila Pharmaceuticals, Dholka 3878 10, Distt. Ahmedabad

2. Sample No. ASR/AS/39 /2013 of four portions (4x3x10) of Tabs of Reactin 50, B.No. DN3123, Mfg. date: Apr. 2013, Exp. Date: March 2014, Manufactured by M/s Cipla Ltd. Village Manakpur, P.O. Lodhimajra, Nalagarh, District Solan (H.P)) 174101.

3. Sample No. ASR/ AS/40/2013 of four portions (4x3x10) Capsules of Woclox-D, B. No. WGS1304, Mfg. date: Jan 2013, Exp. Date: Dec. 2014, Manufactured by – GS Pharmaceuticals Pvt. Ltd. 1.5 Km. Manglour-Saharanpur Road, Manglour - 247656, Roorkee, Distt. Haridwar (U.K.)

All the above said Three samples taken were packed separately and four portions related to each of the sample were prepared. All sample portions were packed and sealed separately by seal of Sh. Amarpal Singh Malhi in the personal presence of accused Balwinder Singh. The samples were marked as Sample No. ASR.AS 38 2013, ASR AS 39 2013 and ASR AS 40 2013 as indicated in the Form 17. All the scaled sample portions were signed by Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar. One copy of Form 17 and one sealed sample portions of each of the samples were given to the accused on the spot and receipt was obtained on Form 17 itself. Original form 17 is enclosed as Annexure D.

6. That fair price of the drugs taken for test and analysis was paid to the accused Balwinder Singh for drugs taken for test and analysis. He issued each receipt of Drugs taken for test and analysis. Original receipt is Annexure E.

7. The inspection report was also prepared by Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar on the spot and it was also signed by accused Balwinder Singh, Inspection report is Annexure F.

8. That this case relates to Sample No. ASR AS 40 2013 of Drug Woclox-D, B.No. WGS1304.

9. That one sealed portion of the sample No. ASR AS 40 2013 taken for test and analysis was sent to the Govt. Analyst, Punjab, Chandigarh alongwith the memorandum on Form 18 as per rules. One copy of form 18 was sent separately as per rules office copy of Form 18 of Drug Sample No. ASR/AS 40 2013 is Annexure G/1.

10. That the Govt. Analyst Punjab, Chandigarh declared the sample No. ASR AS 40 2013 as Not of Standard Quality vide his test report No. 639 dated 06.03.2014 in respect of the contents of Dicloxacillin found to be 67.91 mg/capsule against the label claim of 250 gm/capsule (27.16%) and Amoxycillin found to be 239.16 mg/ capsule against the label claim of 250 mg/capsule. Test report is Annexure-H.

11. That Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar sent registered notice No. Drugs 2014 113 dated 21.03.2014 along with copy of test report No. 639 to M/s Boparai Medical Store, Village Boparai, Tehsil Baba Bakala, District Amritsar to explain his position in this regard. Office copy of this letter is Annexure J and the receipt of the same taken on the office copy itself. The copy of this letter was also endorsed to M/s G.S. Pharmaceuticals Pvt. Ltd., 1.5 Km. Manglour-Saharanpur Road, Distt. Haridwar (U.P.) alongwith copy of test report No. 639 Dated 06.03.2014 and postal receipt of the same in original is attached as Annexure J/1.

12. That the reply of M/s Boparai Medical Store, was received in the office of Drugs Inspector, Amritsar on dated 09.04.2014. The reply of M/s Boparai Medical Store under the signatures of accused Balwinder Singh is enclosed as Annexure K(Kl-K15). The Firm had disclosed in his reply that the Drug in question i.e. Caps Woclox-D, B.No. WGS1304 was purchased from M/s Virdi Pharmaceuticals, Near Post Office Katra Sher Singh, Amritsar Vide Invoice No. 112 Dt. 08.08.2013.

13. That Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar served Notice No. Drugs 2014 139 dated 17.04.2014 along with copy of test report, invoice No. 112 dated 08/08/2013, alongwith one sealed sample portion of M/s Virdi Pharmaceuticals, Near Post Office, Katra Sher Singh, Amritsar to explain his position in this

regard. Office copy of this letter is Annexure L and receipt of the same taken on on the office copy itself.

14. That the reply of M/s Virdi Pharmaceuticals, was received in the office of Drugs Inspector, Amritsar on dated 22/04/2014. The reply of M/s Virdi Pharmaceuticals under the signatures of accused Rajinder Pal Singh is enclosed Annexure – M(M1-M10). The Firm had disclosed in his reply that the Drug in question i.e. Caps Woclox-D, B. No. WGS1304 was purchased from M/s Vineet Pharma Distributors, 81-A, Industrial Area, Ludhiana Vide Invoice No. VIN-109 Dt. 08/02/2013.

15. That accordingly Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar sent registered notice No.Drugs/2014/154 dated 23.04.2014 along with copy of test report and invoice no. VIN-109 Dt. 08/02/2013 to M/s Vineet Pharma Distrutors, 81-A, Industrial Rea, Ludhiana to explain his position in this regard. Office copy of this letter is Annexure N and the postal receipt of the same is annexed as Annexure N/1.

16. That the reply of M/s Vineet Pharma Distrutors, was received in the office of Drugs Inspector, Amritsar 05/06/2014. The reply of M/s Vineet Pharma Distributors under the signatures of accused Vineet Jindal is enclosed Annexure P(P1-P9). The Firm had disclosed in his reply that the Drug in question is Caps Woclox-D, B. No. WGS1304 was purchased from M/s Wockhardt. Ltd., Sehgal House, 256-257, New Jawahar Nagar, Near City Hospital, Jalandhar, Vide Invoice No. 209977512 Dt. 30/01/2013.

17. That Sh. Amarpal Singh Malhi, the then Drugs Inspector, Amritsar sent registered notice No. Drugs/ 2014/233 dated 06/06/2014 along with copy of test report and invoice No.209977512 Dt. 30/01/2013 to M/s Wockhardt. Ltd. Sehgal House, 256-257, New Jawahar Nagar, Near City Hospital, Jalandhar to explain his position in this regard. Office copy of this letter is Annexure Q and the postal receipt of the same is annexed as Annexure Q/1.

18. That Sh. Navdeep Singh joined as Drugs Inspector, Amritsar in July 2014 and received the charge of this case file & property from Sh. Amarpal Singh Malhi.

19. That the complainant joined as Drugs Inspector, Amritsar in September, 2014 and received the charge of this case file & property from S. Navdeep Singh the then Drugs Inspector.

20. That the complainant sent registered notice No. Drugs 2014 396 dated 13/11/2014 along with copy of test

report and invoice No. 209977512 Dt. 30/01/2013 to M/s Wockhardt. Ltd., Sehgal House, 256-257, New Jawahar Nagar, Near City Hospital, Jalandhar regarding non receipt of the reply. Office copy of this letter is Annexure R and the postal receipt of the same is annexed as Annexure R/1.

21. That the reply of M/s Wockhardt. Ltd. was received in the office of Drugs Inspector, Amritsar on dated 28/11/2014. The firm had disclosed in his reply that the Drug in question i.e. Caps Woclox-D, B.No. WGS1304 was acquired by them after transfer stock from M/s Wockhardt. Ltd., Munshi Complex, Shambo Link Road beside Gagan Ghee Factory, (Distt. Patiala) Rajpura 140401 vide voucher No. 11132810 dated 22.01.2013. The copy of reply is attached as Annexure S.

22. That the complainant sent registered notice No.Drugs/2014/187 dated 23/07/2015 along with copy of test report and voucher No. 1113210 Dt. 22/01/2013 to M/s Wockhardt. Ltd., Munshi Complex, Shambo Link Road beside Gagan Ghee Factory, (Distt. Patiala) Rajpura 140401 to explain his position and disclose the source of acquisition of the drug in question. Office copy of this letter is Annexure T and the postal receipt of the same is annexed as Annexure T/1.

23. That the reply of M/s Wockhardt. Ltd. Was received in the office of Drugs Inspector, Amritsar on dated 07/08/2015. The firm had disclosed in his reply that the Drug in question i.e. Caps Woclox-D, B. No. WGS1304 was purchased from manufacturing firm M/s G.S. Pharmaceuticals Pvt. Ltd., 1.5 Manglour-Saharanpur Road, Distt. Haridwar (Uttrakhand) vide Invoice No. 6257 Dated 18.01.2013. The copy of reply is attached as Annexure U(U1-U7).

24. That the complainant sent registered notice No.Drugs/2014/251 dated 08/09/2015 along with copy of test report and Invoice No. 6257 Dt. 18/01/2013 to M/s G.S. Pharmaceuticals Pvt. Ltd., 1.5 Km. Manglour-Saharanpur Road, Distt. Haridwar (Uttrakhand) to explain his position. Office copy of this letter is Annexure W and the postal receipt of the same is annexed as Annexure W/1.

25. That till 05.10.2015 neither any reply nor any undelivered letter received from M/s G.S. Pharmaceuticals Pvt. Ltd., Roorke, District Haridwar in response to Letter No.Drugs/2014 251 dated 08.09.2015.

26. That the complainant sent the complete investigation report vide office letter No.Drugs/2015/262 dated 05/10/2015 and demanded Prosecution orders against the

accused involved in manufacturing, sale & stocked for sale of Drug Woclox-D, B.No. WGS1304 declared Not of Standard Qualify by Government Analyst, Office copy of this letter is Annexure-X.

27. That the reply of M/s G.S. Pharmaceuticals Pvt. Ltd., 1.5 Km. Manglour-Saharanpur Road, Manglour -247656, Roorkee Distt. Haridwar (Uttrakhand) was received in the office of Drugs Inspector, Amritsar on dated 20.10.2015 and is attached as Annexure-Y.

28. That the State Drugs controlling & Licensing Authority issued the Prosecution Order Vide No. Drugs(7) Pb. 2015 4397 dated 30.03.16 for launching Prosecution against the accused responsible for manufacturing & sale of Drug Woclox-D, B.No. WGS1304 which has been declared as Note of Standard Qualify By Govt. Analyst Punjab, Chandigarh. The Prosecution orders enclosed as Annexure-Y/ 1.

29. That the complainant sent a letter No. 179 dated 22.08.2016 to Drugs Inspector Jalandhar-II and demanded constitution details and person responsible for conduct of business under Drugs & Cosmetics Act, 1940 of M/s Wockhardt. Ltd. Sehgal House, 256-257, New Jawahar Nagar, Near City Hospital, Jalandhar which is annexed as Annexure-Z and in reply Drugs Inspector, Jalandhar-II has sent a constitution is annexed as Annexure-Z/ 1.

30. That the complainant sent a letter No. 189 dated 24.08.2016 to Drugs Inspector Patiala-2 and demanded constitution details and person responsible for conduct of business under Drugs & Cosmetics Act, 1940 of M/s Wockhardt. Ltd., Munshi Complex, Shambo Link Road beside Gagan Ghee Factory, Rajpura, Distt. Patiala which is annexed as Annexure-II and in reply Drugs Inspector, Patiala-2 has sent the constitution is annexed as Annexure-II/ 1.

31. That the complainant sent a letter No. 187 dated 24.08.2016 to Drugs Inspector Ludhiana-4 and demanded constitution details and persons responsible for conduct of business under Drugs & Cosmetics Act, 1940 to M/s Vineet Pharma Distributors, 81-A, Industrial Area-A, Near Safian Chowk, Ludhiana which is annexed as Annexure-III in reply Drugs Inspector Ludhiana-4 has sent the constitution is annexed as Annexure-III/ 1.

32. That the complainant sent a letter No. 181 dated 22.08.2016 to Drugs Inspector, Amritsar-II and demanded constitution details and person responsible for conduct of business under Drugs & Cosmnetics Act of M/s Virdi Pharmaceuticals, near Post Office, Katra Sher Singh Amritsar which is annexed as Annexure-IV and in reply

Drugs Inspector, Amritsar-II has sent the constitution is annexed as Annexure-IV/ 1.

In view of the aforesaid facts and circumstances it is clear byond doubt that the accused

1. Balwinder Singh s/o S. Sucha Singh Incharge M/s Boparai Medical Store, Village Boparai, Tehsil Baba Bakala, Distt. Amritsar

2. Firm M/s Boparai Medical Store, Village Boparai, Tehsil Baba Bakala, Distt. Amritsar.

3. Rajinderpal Singh s/o Sh. Jaswant Singh Prop. R/o Abadi Mahant (Laxman Dass, Sultanwind Road, Prop of M/s Virdi Pharmaceuticals, Near Post Office Katra Sher Singh, Amritsar

4. Vineet Jindal s/o S. Subash Jindal Prop. Of M/s Vineet Pharma Distributor, 81-A, Industrial Area-A, Near Safidon Chowk, Ludhiana.

5. Rajesh Sehgal s/o Sh. Late Salamat Rai Sehgal R/o 256, Jawahar Nagar, Jalandhar, Authorized Signatory M/s Wockhardt. Ltd., 257, New Jawahar Nagar, Jalandhar.

6. Gurinder Singh s/o Sh. Mohinder Singh R/o Village Dhakansu Mi̱ra, Gagan Chowk, Rajpura, Sales Supervisor of M/s Wockhardt Ltd., Munshi Complex, Shamdoo Link Road, besides Gagan Ghee Factory, Distt. Patiala, Rajpura 140401

7. Hakim Khan s/o Sh. Sabit Mohammad r/o village Haripur Kure P.O. Devi Nagar, Tehsil Derabassi, District Mohali, Sales Supervisor of M/s Wockhardt Ltd., Munshi Complex, Shamdoo Link Road, besides Gagan Ghee Factory, Distt. Patiala, Rajpura 140401

8. Marshal Arora s/o Sh. Ved Arora R/o 59B, Sector 1, Huda, Ambala, GPA & Competent person of M/s Wockhardt Ltd., Munshi Complex, Shamdoo Link Road, besides Gagan Ghee Factory, Distt. Patiala, Rajpura 140401

9. M/s Wockhardt. Ltd., Munshi Complex, Shambo Link Road beside Gagan Ghee Factory, Distt. Patiala, Rajpura 140401

Has stocked for sale and sold the drug Sample No. ASR AS 40 2013, Woclox-D, B.No. WGS1304, Míg. Date: 01 2013, Exp. Dt.: 12 2014, at his premises which has been declared as not of standard quality by Govt. Analyst, Punjab as the contents of Dicloxacillin found to be 67.91 mg. capsule against the label claim of 250 gm capsule and Amoxycillin found to be 239.16 mg capsule against the label claim of 250 mgs. Capsule and falls within the

definition of Spurious Drug under Section 17 of the Drugs & Cosmetics Act, 1940.

10. Vivek Arora R/o Civil Lines South Muzaffarnagar 251001 UP IN Director M/s G.S. Pharmaceuticals, 1.5 Km. Manglour-Saharanpur Road, Distt. Haridwar (UK).

11. Firm M/s G.S. Pharmaceuticals, 1.5 Km. Manglour-Saharanpur Road, Distt. Haridwar (UK).

has manufactured & stocked for sale and sold the drug Sample No.ASR AS 40 2013, Woclox-D, B.NO. WGS1304, Mfg. Date: 01/2013, Exp. Dt.: 12, 2014, at his premises which has been declared as not of standard quality by Govt. Analyst, Punjab as the contents of Dicloxacillin found to be 67.91 mg. capsule against the label claim of 250 gms capsule and Amoxycillin found to b 239.16 mg capsule against the label claim of 250 mgs. Capsule and falls within the definition of Spurious Drug under Drugs & Cosmetics Act, 1940

Therefore the aforesaid accused has contravened following provisions of the Act.

1. Section 18(a)(i) read with Section 17B by manufacturing for sale and sold sample No. ASR AS 40 2013 of Drug Woclox-D, B. No. WGS 1304 which is declared as not of Standard Quality and the same punishable under 27 Drugs & Cosmetics Act, 1940.

(a) If it is manufactured under the name which belongs to another drug; or

(b) If it is an intimation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bear upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its character and its lack identity with such other drug; or

(c) If the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or

(d) If it has been substituted wholly or in part by another drug or substance; or

(e) If it purports to be product of a manufacturer of whom it is not truly a product.

2. Section 27(c) - Penalty for manufacture, sale etc. of drugs in contravention of this chapter-whoever, himself or by any other person on his behalf, manufactures for sale or for distribution or sells or stocks or exhibits or offers for sale or distributes.

(a) any drug deemed to be spurious under Section 17B but not being a

(b) drug referred to in a clause (a) shall be punishable with imprisonment for a term which shall [not be less than seven year but which may extend to imprisonment for life and with fine which shall not be less than three lakh rupees or three times the value of the drugs confiscated, whichever is more.

That offences under Section 27(c) relating to Spurious and Adulterated Drugs are cognizable and non-bailable as mentioned under Section 36AC of Drugs & Cosmetics Act, 1940.

Further it is requested that the cases related to Spurious and Adulterated Drugs are triable in designated special Court as per Section 36AB of Drugs & Cosmetics Act, 1940

Therefore Hon'ble Court is requested to take the cognizarnce of the complaint and accused may please be tried as per Law.

Undersigned complainant is filing this complaint by virtue of section 32 of the Drugs & Cosmetics Act and Hon'ble Court is requested to kindly dispose off this complaint as per the provisions of law. Undersigned complaint being Govt. servant having multifarious duties presence on each and every date of hearing may kindly be exempted."

5. **Submissions of the learned counsel for the petitioners:-**

5.1 Learned counsel for the petitioners inter alia submit that prima facie the essential ingredients of the offences alleged are not even made out from a bare reading of the complaint in question (Annexure P/14). In the complaint, it has been averred that in the report of the Government Analyst dated 06.03.2014 (annexed as Annexure P/2), the samples of drugs were allegedly found to be not of standard quality as Dicloxacillin was just 67.91 mg per capsule against the labelled declaration of 250 mg per capsule. Therefore, though not admitted, it could be termed to be at best a case of misbranding of drugs, which

would attract penalty under Section 27(d) of the Act and certainly not a case wherein spurious drugs had been manufactured, attracting the provisions of Section 17 of the Act.

5.2 It has been further submitted that the Manufacturing Company vide its letter dated 12.04.2014 (Annexure P/4) had challenged the report of the Government Analyst within 28 days from the receipt of its intimation by the Drugs Inspector, and applied for re-analysis and re-verification of the sealed sample. The Drug Inspector had also been requested to provide a sealed sample to the petitioners, however, despite the said request having been made, the respondent did not provide a sample to the petitioners for sending it to the Central Drugs Laboratory for reanalysis. In the meantime, the sample expired in the month of December, 2014, which was only due to the fault of the respondent, who had failed to provide the sealed sample to the petitioners. Resultantly, they were not only unable to get the sample retested from the Central Drugs Laboratory, but the Manufacturing Company also lost its invaluable right to dispute the correctness of the report of the Government Analyst.

5.3 Learned counsel has, thus, vehemently argued that in the above circumstances when the petitioners had been deprived of their invaluable right by the respondent, the prosecution could not be maintained against them. In support, learned counsel has placed reliance upon ***Laborate Pharmaceuticals India Ltd and others Vs. State of Tamil Nadu : 2017 AIR (Supreme Court) 2423*** and ***M/s***

Medicamen Biotech Ltd. and another Vs. Rubina Bose, Drug Inspector : 2008(2) RCR (Criminal) 496.

6. Reply dated 16.08.2019 filed in the Registry of this Court by way of affidavit of Amarpal Singh Malhi, Drugs Inspector, Amritsar IV, is taken on record subject to all just exceptions.

7. **Contentions by learned State counsel on behalf of the respondent:-**

7.1 Learned State counsel, while opposing the prayer and submissions made by the counsel opposite, submits that there had been due compliance of the provisions of Section 23 of the Act; in fact a sealed sample of the seized drugs was supplied to the M/s Virdi Pharmaceuticals from whom the retailer had purchased the drug and thus, there was no need to separately send the sample to the petitioners.

7.2 Learned State counsel has further argued that the alleged letter dated 12.04.2014 (Annexure P-4) had never been received by the Drugs Inspector and was just an afterthought by the petitioners to wriggle out of their liability, as they had failed to apply for re-analysis of the drug samples within a period of 28 days; hence, the report of the Government Analyst would in the above circumstances be deemed to be final and the petitioners could thus, be prosecuted on the basis of the report of the Government Analyst.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. The petitioners have raised a plea that their invaluable right for re-analysis of the sample was defeated on account of the fault of the

respondent since they were never provided with the sample as a result of which they were unable to dispute/re-verify the report of the Government Analyst. Hence, their prosecution was bad in law.

10. Before proceeding further, it would be apposite to reproduce Sections 23 and 25 of the Act, which are as under:-

> **"23. Procedure of Inspectors.—**
>
> *(1) Where an Inspector takes any sample of a drug or cosmetic under this Chapter, he shall tender the fair price thereof and may require a written acknowledgement therefor.*
>
> *(2) Where the price tendered under sub-section (1) is refused or where the Inspector seizes the stock of any drug 1[or cosmetic] under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.*
>
> *(3) Where an Inspector takes a sample of a drug or cosmetic for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked: Provided that where the sample is taken from premises whereon the drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only: Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.*
>
> *(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—*
>
> *(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;*
>
> *(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug or cosmetic; and*

(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.

(5) Where an Inspector takes any action under clause (c) of section 22,—

(a) he shall use all despatch in ascertaining whether or not the drug or cosmetic contravenes any of the provisions of section 18 and, if it is ascertained that the drug or cosmetic does not so contravene forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug or cosmetic, he shall as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug or cosmetic, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof. (6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof.

25 Reports of Government Analysts. —

XXX *XXX* *XXX*

XXX *XXX* *XXX*

(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."*

11. Thus, as per the mandate of Section 23(iii) of the Act, one portion of the sample drawn has to be sent to the person whose particulars have been disclosed under Section 18A of the Act, which in the instant case would be the petitioners. This has to be appreciated in the light of the provisions of S.25 which provides that any document claiming to be a report signed by a Government Analyst is to be considered as evidence of the facts mentioned in it. The report of the Government Analyst is generally considered conclusive unless the person from whom the sample was taken or the person whose information is disclosed under Section 18(a) of the Act takes specific action to controvert it and notifies his intention to controvert it, in writing, either to the Inspector or the Court where proceedings related to the sample are pending, within 28 days of receipt of the copy of the report . It is only when such notice as provided under Section 25(3) of the Act is given and the sample has not already been tested or analyzed in the Central Drugs Laboratory, the Court has the authority to either, on its own initiative or at the request of the complainant or the accused, send the sample to the Central Drugs Laboratory for retesting or

reanalysis. In this background, the right of the petitioners to obtain a part of the sample and request for a re-analysis becomes critically significant. In absence thereof, the petitioners would be left with no means to challenge the report of the Government Analyst.

12. Adverting to the facts of the case in hand, the respondent in para 7 of its reply dated 16.08.2019 has admitted that a sealed sample portion was not given to the manufacturing company and only the Test Report was sent to it. Thus, admittedly there has been a clear violation of the provisions of Section 23 of the Act. The argument of the learned State counsel that sending the sample to M/s Virdi Pharmaceuticals (supplier of the drugs) would be deemed compliance of the provisions of Section 23 of the Act, is unacceptable. Evidently, since the petitioners were deprived of their right to challenge the report of the Government Analyst, it can be safely concluded that it was an affront to the right of the petitioners to a fair trial.

13. Furthermore, the Manufacturing Company upon receipt of the Test Report on 26.03.2014, sent a letter dated 12.04.2014 (Annexure P-4) within the window period of 28 days to the Drug Inspector, notifying their intent to dispute the report of the Government Analyst, and with a further request for providing it a sealed sample for re-analysis before the Central Drugs Laboratory. Attention of this Court was drawn to postal receipt dated 16.04.2014 (Annexure P-4) which confirmed proper addressing and postage. The postal receipt thus, creates a presumption of delivery of the letter dated 12.04.2014, and the

respondent cannot avoid responsibility by simply denying receipt of the registered letter.

14. Despite delivery of the letter to the respondent by the petitioners, no action was taken, and the petitioners were not provided with the sealed sample. Ultimately, the sample expired in December, 2015, due to the fault of the respondent. Consequently, the petitioners were deprived of the opportunity to contest the report of the Government Analyst.

15. The petitioners cannot be subjected to criminal prosecution in light of the denial of their statutory rights to have their sample analyzed by the Central Drugs Laboratory, especially when they are not at fault.

16. At this stage, it would be relevant to refer to the ratio of law laid down by Hon'ble the Supreme Court in ***Laborate Pharmaceuticals India Ltd (supra)***, wherein while dealing with similar facts, it has been held as under:-

> *"9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be lame prosecution."*

17. As a sequel to the above, the instant petitions are allowed and Complaint No.06 dated 06.01.2017 titled as 'State through Drugs Inspector, Amritsar Vs. Balwinder Singh and others' and under Sections 18(a)(vi) punishable under Section 27(c) of the Act and all subsequent proceedings arising therefrom including summoning order dated 06.01.2017 are quashed qua the petitioners.

10.10.2023 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No