S. No.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-23426 of 2022 (O&M)
Date of Decision: 08.02.2023.

Varun Kapoor and others **.....Petitioners**

Vs.

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

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajinder Sharma, Advocate
for the petitioners.

Mr. P.S. Pandher, AAG, Punjab.

Ms. Harpreet Kaur, Drug Inspector
in person.

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DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr. P.C., petitioners have prayed for quashing complaint No. COMA-536-2020 dated 26.06.2020 (Annexure P.7) pending in the Court of learned Chief Judicial Magistrate, Amritsar besides summoning order dated 26.06.2020 (Annexure P.8, notice of accusation dated 11.03.2022 (Annexure P.9) and the subsequent proceedings due to non-compliance of Section 23(4)(iii) of Drugs and Cosmetic Act, 1940.

2. On 30.01.2018, Drug Inspector, Amritsar took sample of 5 drugs from M/s Montu Medical Store (a retailer), situated at Village and Post Office Chogawan, Tehsil Ajnala, District Amritsar. One of the drug, sample of which was taken was 3 strips of 10 capsules each “SANRAB”, the manufacturing date of which was November, 2017 and expiry as October, 2019. Said drug had been manufactured by Ticoma Pharmacia, i.e. petitioner No.3. Petitioners No.1 and 2 are the partners of said

manufacturing firm. The sample portion was divided into four equal portions and was sealed as per statutory requirements by the Drug Inspector, who handed over one of the sealed sample portion to Surinder Singh, partner of the retailer firm, other to the government analyst and one was deposited in the Court.

3. Contention of the petitioners is that one portion of the sample was required to be sent to the manufacturer as per Section 23(4)(iii) of the Drugs Cosmetics Act, 1940 (for short, `the Act') and due to non-compliance of this provision, the petitioner – manufacturer could not get the same analysed and raise demand to adduce evidence in contravention of the report as provided under Section 25 of the Act. It is urged that details of manufacturer were available with the Drugs Inspector as evident from the contents of Form 17, which amounts to disclosure of name and address of the manufacturer under Section 18-A of the Act. It is further contended that one sealed portion of sample, on analysis by the government analyst, Punjab was declared to be not of standard quality as per his report dated 04.05.2018. Letter along with the report was sent to the retailer M/s Montu Medical Store, who disclosed that drug in question was purchased by him from M/s Shingari Medicare, Narula Complex, Amritsar (Distributor). Letter to explain the position regarding adverse drug report of the sample was then sent to the distributor with the copy to manufacturing firm, i.e. petitioner. However, despite receiving letter from the manufacturer that it had not received part of the sample as required under Section 23(4)(iii) of the Act to file objections to raise demand for re-analysis, the Drug Inspector filed complaint on 26.06.2020 for prosecution of the petitioners and others under Section 18(a)(i) punishable under Section 27(d) of the Act.

4. It is further contended that learned Court without applying judicious

mind, has summoned the petitioners. Contention raised by learned counsel for the petitioners is that because of the non-compliance of Section 23(4)(iii) of the Act, rights of the petitioners have been prejudiced and so, continuation of the complaint would be the lame prosecution in these circumstances. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the matter of ***Laborate Pharmaceuticals India Ltd., and others Vs. State of Tamil Nadu, (2018) 15 SCC 93***.

5. In reply filed by the respondent- State through Drug Inspector, it is submitted that sample was taken as per the procedure laid down in Section 23 of the Act and the sample report was forwarded to the retailer. After disclosure by the retailer in his reply dated 29.08.2018 that drug was purchased by it from M/s Shingari Medi Care, the copy of the sample report along with sealed sample portion was sent to M/s Shingari Medicare as per the procedure laid down in the Act. Reliance is placed upon a judgment of the Hon'ble Supreme Court in ***Amery Pharmaceuticals Vs. State of Rajasthan, (2001) 4 SCC 382.*** It is submitted further that it was the responsibility of the petitioners to collect the sealed sample portion from their distributor/ supplier. It is pointed out further that in reply dated 24.09.2018, petitioners submitted that they had sought the sample portion from M/s Shingari Medicare along with test report. It is further contended that petitioners had the full right to challenge the report of the government analyst within 28 days from the date of receipt of the notice as per Section 25(3) of the Act but they failed to do so and rather, sent the reply on 24.09.2018 with a malafide intention. With these submissions, prayer is made for dismissal of the petition.

6. I have considered submissions of both the sides and have appraised

the record.

7. Section 27 of the Drugs and Cosmetics Act, 1940, renders a person, who manufactures for sale or for distribution, or sells or stocks or exhibits or offers for sale any drug deemed to be adulterated or spurious drugs, liable to punishment with imprisonment, which shall not be less than ten years though may extend to imprisonment for life and shall also be liable to fine, which shall not be less than 10 lacs or three times the value of the drugs confiscated.

8. Section 23 of the Act empowers an Inspector to take sample of any drug for the purpose of test or analysis. Section 25 empowers the government analyst, to whom a portion of the sample has been submitted for test to deliver a report to the Inspector in duplicate stating the facts discerned in the test or analysis.

9. As observed by Hon'ble Supreme Court, in ***Amery Pharmaceuticals Vs. State of Rajasthan (supra)***, as per Section 25(2) of the Act, Inspector shall deliver one copy of the report to the person from whom the sample was taken, another copy of the report to person whose name and address have been disclosed to the Inspector, whereas third copy shall be retained by the Inspector for use in any prosecution in respect of the sample.

10. Section 25(3) of the Act is relevant which reads as under:-

> *"(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."

11. It is contended by learned counsel for the petitioners that the petitioner- manufacturer has been disabled from controverting the finding of the government analyst in this case because he was not provided the portion of the sample, which was taken by the Drug Inspector on 30.01.2018. Contention of learned counsel is that the petitioner could challenge the report by notifying his intention to the trial Court or the Drug Inspector to adduce evidence in controversion of the report only in case a portion of the sample was sent to him. It is further urged that name of the petitioner – manufacturer was duly mentioned in Form 17, despite which compliance of Section 23(4)(iii) of the Act was not made.

12. Section 23 of the Act provides the procedure of Inspectors. Sub-section (4) thereof is relevant, which provides the procedure for the Inspector to be followed after he has taken sample. The said provision reads as under:-

"(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."

13. A reading of the above-said provision to be read with Section 25 of the Act already reproduced, would indicate that after taking the sample, the Inspector is required to hand over one portion of sample in sealed condition to the person from whom he takes it (retailer in this case); second portion is required to be sent to the government analyst for test/ analysis; another portion is required to be produced in the Court before which proceedings are to be instituted in respect of the drug and the last sample is required to be sent to the person, whose name, address and other particulars have been disclosed under Section 18-A of the Act.

14. It is important to notice that a portion of the sample in sealed condition is required to be sent to the person whose name, address and other particulars are disclosed under Section 18-A of the Act. At this stage, it becomes important to notice the provision contained in Section 18-A which reads as under:-

> *"**18A Disclosure of the name of the manufacturer**, etc: - Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic."*

15. A bare perusal of the above-said provision would reveal that a person, who is neither the manufacturer of the drug nor the agent for distribution, is required to disclose to the Inspector, the name, address and other particulars of the person from whom he acquired the drug or the cosmetic. It is important to notice here itself that requirement of Section 18A is to disclose the name, address and other particulars of the person from whom the concerned person has acquired the drug. It is not the requirement of law that the concerned person has to disclose

the name of the manufacturer. He is only to disclose the particulars of the person from whom he acquired the drug or cosmetic.

16. In the present case, the retailer M/s Montu Medical Store through its partner Surinder Pal Singh, after receipt of the report of the government analyst, disclosed to the Drug Inspector vide his reply dated 29.08.2018 that he had purchased the drug in question, the sample of which was taken from him from M/s Shingari Medicare. It is not the case of any of the parties that the retailer M/s Montu Medical Store from whose premises, the sample was taken, disclosed the name, address or particulars of the manufacturer, i.e. the petitioner. Rather, he specifically disclosed the name of distributor i.e. M/s Shingari Medicare, from whom he had purchased the drug. Thus, it is M/s Shingari Medicare, who was entitled to receive the report of the government analyst as per Section 25(3) of the Act.

17. Simply because the name of the manufacturer was mentioned in Form 17, does not mean that one portion of the sample was required to be sent to the said manufacturing firm under Section 23(4) (iii), as is contended by learned counsel.

18. After the fact was disclosed by the retailer M/s Montu Medical Store to the Drug Inspector that he had purchased the drug in question from M/s Shingari Medicare, notice was sent to the said distributor along with the report of the government analyst on 31.05.2018 (Annexure P.4) with a copy to the manufacturer i.e. petitioner.

19. Although as per Section 25(3), the person whose name, address and particulars are disclosed under Section 18-A, has the right to notify his intention in writing to the Inspector or the Court that he intends to adduce evidence in

contravention of the report and despite the fact that notice was sent to the distributor as well as manufacturer on 31.05.2018, the reply was sent by the manufacturer on 24.09.2018 (Annexure P.5). In the said reply also, the Drug Controller Officer was informed that petitioner had requested M/s Shingari Medicare i.e. its distributor/ supplier to give the sealed portion of the sample, so that they could provide in house test report and verify the drugs sample.

20. There is nothing on record to suggest that the distributor M/s Shingari Medicare or the petitioner, i.e. manufacturing firm to whom the notice dated 31.05.2018 along with the report of the government analyst was sent, moved any application before the Drug Inspector or the Court within 28 days of the said notice showing the intention to adduce evidence in contravention of the report of the government analyst.

21. The facts of ***Laborate Pharmaceuticals India Ltd.'s case (supra),*** on which ld. counsel for the petitioners has relied are quite distinguishable. In that case, after receipt of the report of the government analyst, show cause notice along with copy thereof was sent to the manufacturing firm, though portion of the same had not been sent. Hon'ble Supreme Court held that one portion of the sample was required to be sent to the government analyst, another to the Court and the last one to the manufacturer, whose name was disclosed under Section 18A of the Act as per Section 23(4(iii) of the Act.

22. As in the present case, the name of the petitioner – manufacturer was not disclosed under Section 18A of the Act by the retailer i.e. Montu Medicare and rather, it is the name of the distributor M/s Shingari Medicare, which was disclosed, therefore, Drug Inspector was under no obligation to send portion of the sample to the petitioner- manufacturer, simply because its name was mentioned in

Form 17.

23. Rather the facts of this case are quite similar to the facts in ***Amery Pharmaceuticals's case (supra),*** wherein the sample was taken from a medical retailer shop and when the portion of sample was tested by the government analyst and was reported to be misprinted, the retailer had disclosed the address of his distributor/ wholeseller M/s Chetan Medical Store, from whom he had obtained the drug. The distributor had then disclosed the name of manufacturing firm. In these facts, Hon'ble Supreme Court dismissed the petition filed by the manufacturer for quashing proceedings qua them.

24. In view of aforesaid discussion of the factual & legal position, the present petition is held to be without any merit and, therefore, the same is hereby dismissed.

February 08, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No