IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) **CRM-M-42989-2014**

Satish Kumar and others ..... Petitioners

Versus

State of Punjab and others ..... Respondents

(i) **CRM-M-8724-2015**

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

Versus

State of Punjab ..... Respondent

Date of Decision : 31.05.2023

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Deepak Sabherwal, Advocate
for the petitioners in CRM-M-42989-2014.

Mr. Suman Jain, Advocate
for the petitioners in CRM-M-8724-2015.

Mr. M.S.Nagra, AAG, Punjab.

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VIKRAM AGGARWAL, J

This judgment shall decide two petitions, both filed under Section 482 of the Code of Criminal Procedure 1973 (for short 'Cr.P.C.') seeking quashing of complaint dated 11/12.06.2014, filed under Section 18 (a) (i) punishable under Section Section 27(d) of the Drugs & Cosmetics Act,

1940 (hereinafter referred to as 'the Act'), summoning order dated 11.06.2014 and all consequential proceedings arising therefrom. Since both the petitions are seeking the same relief, the facts are being taken from ***CRM-M-42989-2014***, titled as ***Satish Kumar and others versus State of Punjab and others***.

On 16.03.2010, the Drugs Inspector, Gurdaspur carried out an inspection at M/s Rakesh Medicos, near PWD Rest House, Gurdaspur. Two samples marked as GDSP/DKG/32/2010 (hereinafter referred to as 'sample No.1') and GDSP/DKG/33/2010 (hereinafter referred to as 'sample No.2') were taken for test and analysis as per the provisions of the Act and the Rules made thereunder. Sealing etc. was done in accordance with the provisions of the Act. One sample portion was handed over to the Proprietor of M/s Rakesh Medicos namely Sh. Rakesh Kumar Arora, who was present at the spot. The formalities as envisaged under the Act were carried out. Sample No.1 was of Pentotas-D tablets, manufactured by M/s G.S.Pharmaceuticals Pvt. Ltd. (petitioner in the second petition i.e. CRM-M-8724-2015) and sample No.2 was of Merispas tablets, manufactured by one Unitech Formulations. The samples were sent to the Government Analyst, Punjab Chandigarh. As per the report dated 11.10.2010 (Annexure P-1) , sample No.1 was declared to be not of standard quality as there was a weight variation and the contents of Pantoprazole were found to be 33.62 mg per tablet against the labelled claim of 40 mg per tablet. Vide report dated 15.10.2010, sample No.2 was declared to be of standard quality. The present cases are concerned with sample No.1. A copy of the test report was sent to

M/s Rakesh Medicos vide letter dated 20.10.2010. Rakesh Kumar Arora, Proprietor of M/s Rakesh Medicos gave a reply dated 02.11.2010 in which it was disclosed that the drug had been purchased from M/s Neelam Trading Corporation (petitioner No.5 in **CRM-M-42989-2014**) vide invoice dated 18.02.2010. One copy of the test report was sent to M/s G.S.Pharmaceuticals Pvt. Ltd. and reply dated 24.05.2011 was received from the said Company. One copy of the analysis report alongwith sample portion was also sent to M/s Neelam Trading Corporation and the reply dated 09.12.2010 was received from the said Corporation in which it was disclosed that the drug in question had been purchased from M/s Intas Pharamaceuticals Limited vide invoices dated 19.11.2009 and 18.12.2009. Under these circumstances, the analysis report was also sent to M/s Intas Pharmaceuticals Limited but the said firm was found to be closed at the given address. After completion of all formalities, complaint dated 11/12.06.2014 was filed. The Court took cognizance and summoning order was passed leading to the filing of the present petitions.

The petitioners have challenged the complaint on various grounds which include limitation, protection as envisaged under Section 19(3) of the Act, violation of the provisions of Section 25 (3) of the Act, the sample not having been produced in the Court nor having been supplied to the manufacturer for more than 03 years and original copies of documents not having been filed in the Court.

Both the quashing petitions have been opposed by the respondent-State of Punjab by way of replies. The contents of the complaint

have virtually been reiterated in the replies. All averments have been denied and dismissal of the petitions has been prayed for.

I have heard learned ocunsel for the parties and have also gone through the paper books.

Sh. Deepak Sabherwal, Advocate, learned counsel representing the petitioners in CRM-M-42989-2014 has strenuously urged that the complaint deserves to be quashed. It has been submitted that the complaint is barred by limitation since it was not filed within the time period envisaged under Section 468 Cr.P.C. An argument has also been raised that the petitioners are protected under the provisions of Section 19(3) of the Act.

Sh. Suman Jain, Advocate, learned counsel representing the petitioners in CRM-M-8724-2015 has also raised the ground of limitation, violation of the provisions of Section 25 (3) of the Act as the sample was never sent to the petitioners who were the manufacturers of the drug in question. Reliance has also been placed upon the guidelines (Annexure P-6 in CRM-M-8724-2015) and it has been submitted that even as per the report of the Analyst, there was only violation in the weight of Pantoprazole and, therefore, no prosecution would be made out. In support of their contentions, learned counsel have placed reliance upon the judgments of Hon'ble Supreme Court of India in *State of Rajasthan versus Sanjay Kumar 1998 (3) R.C.R. (Criminal) 846, M/s Medicamen Biotech Ltd. & Anr. versus Rubina Bose, Drug Inspector 2008 (2) R.C.R.(Criminal) 496, Laborate Pharmaceuticals India Ltd. and Ors. Versus State of Tamil Nadu 2017 AIR (SC) 2423 and the judgments of Coordinate Benches of this Court in M/s Ganesh Agro Service*

Centre, Moga versus State of Punjab 2003 (1) R.C.R. (Criminal) 833 and Brij Mohan and another versus State of Punjab through the District Drugs Inspector, Amritsar 2013 (24) R.C.R. (Criminal) 795.

On the other hand, learned counsel representing the respondent-State of Punjab has submitted that there is no merit in the petitions and they deserve to be dismissed. It has been submitted that the complaint is not barred by limitation and further there has been no violation of the provisions of Section 25 of the Act. Learned counsel has referred to the documents annexed with the petitions as also to the replies submitted by the State and has contended that the premises of the manufacturer i.e. M/s Intas Pharamaceuticals Limited was found to be closed and, therefore, the sample could not be supplied. Reliance has been placed upon the judgment of Hon'ble Supreme Court of India in ***Glaxo Smith Kline Pharmaceuticals Ltd. and another versus State of Madhya Pradesh 2011 AIR (SCW) 4525.***

I have considered the submissions made by learned counsel for the parties.

Before adverting to the merits of the cases, it would be essential to refer to the statutory provisions and the law on the subject. Section 16 of the Act deals with standard of quality and lays down that in relation to a drug "standard quality" means that the drug complies with the standard set out in the second schedule. Section 17 defines mis-branded drugs whereas Section 17-A defines adultrated drugs. Section 17-B defines spurious drugs. Section 25 of the Act lays down as under:-

> **"25. Reports of Government Analysts.--**(1) The Government Analyst to whom a sample of any drug [1][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 [2][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 [3][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 [1][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.

Section 27 of the Act deals with penalty for manufacture, sale

etc. of drugs in contravention of the provisions of the Act.

In so far as the limitation is concerned, Section 468 Cr.P.C. lays down as under:-

> "468. **Bar to taking cognizance after lapse of the period of limitation--**(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.
> (2) The period of limitation shall be-
> (a) six months, if the offence is punishable with fine only;
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
> (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
> (3) 1 For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

Section 469 Cr.P.C. deals with the commencement of the period of limitation and lays down as under:-

> "469. **Commencement of the period of limitation.--**(1) The period of limitation, in relation to an offender, shall commence,-
> (a) on the date of the offence; or
> (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
> (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

Since the complaint was filed under Section 18 (a) (i) punishable under Section 27(d) of the Act, the punishment is minimum one year but may extend to two years alongwith fine which would not be less than ₹20,000/-. As per Section 468 (2) (c) Cr.P.C., limitation in such cases would be 03 years. As per Section 469(1)(b), the period of limitation would commence from the first date on which such offence comes to the knowledge of the person aggrieved by the offence.

In ***State of Rajasthan versus Sanjay Kumar's case*** (supra) the Hon'ble Supreme Court of India was dealing with the question of limitation under the provisions of the Act. In that case, samples of some drugs had been collected from a medical store in Baroda (Gujarat). The samples were sent to the Government Analyst and as per the report, the drugs were not of standard quality. After due inquiry and investigation, prosecution was ordered and, therefore, complaint under the provisions of the Act was filed. The Court took cognizance on the same day and summons were issued. While examining the provisions of the Act and Cr.P.C. it was held by the Hon'ble Supreme Court of India that the limitation for the purposes of Section 468 (2) (c) would commence from the date of knowledge of the commission of the offence which in that case would be the date of the report of the public analyst and not from the date of taking of samples. A similar view was taken by a Coordinate Bench of this Court in ***Ganesh Agro Service Centre, Moga and Brij Mohan and another's cases*** (supra).

In so far as the provisions of Section 25 of the Act are concerned, in the case of *M/s Medicamen Biotech Ltd.* (supra) the Hon'ble Supreme Court of India held that the right under Sections 25 (3) and 25 (4) of the Act was a valuable right and any violation of the same would be illegal. A similar view was taken by the Hon'ble Supreme Court of India in *Laborate Pharmaceuticals India Ltd. and others's case* (supra)

Reverting to the facts of the present cases, sample No.1 was taken from M/s Rakesh Medicos on 16.03.2010. First of all, the provisions of Section 23 (4) of the Act were not complied with as no sample was sent to the manufacturer. Further, the report of the Public Analyst was of 11.10.2010 (Annexure P-1) whereas the complaint was filed on 11.06.2014. The summoning order was passed on the same day i.e. on 11.06.2014 (the summoning order is on record in CRM-M-8724-2015 as Annexure P-8). If one goes through the provisions of the Act and Cr.P.C. as have been referred to in the preceding paragraphs, it emerges that the complaint is barred by limitation since it was filed after a period of more than 03 years from the date of the report. At the cost of repitition, it needs to be mentioned that the report of the Public Analyst (Annexure P-1) was of 11.10.2010 and this would be the date on which the department acquired the knowledge of there having been a violation of the provisions of the Act. The period of limitation would start running from this date and there was a period of 03 years for filing of the complaint but the same was filed on 11.06.2014 i.e. after more than 03 years. The trial Court, therefore, wrongly took cognizance of the complaint without noticing that the complaint was barred by limitation. In so far as the alleged

violation of the provisions of Section 19(3) of the Act is concerned, no violation can be said to be there since the petitioner in the first petition is the distributor and, therefore, the provisions of Section 19(3) of the Act would not be applicable.

The complaint is also not sustainable because of the violation of the provisions of Section 25 of the Act as no sample was sent to the manufacturer within the specified period. No opportunity was given to the manufacturer to get the sample retested. Infact, a specific stand has been taken that a request for retesting of the sample was made by M/s Intas Pharamaceuticals Limited but as per the reply filed by the State, no such request was available in their record. Under these circumstances, the judgment in the case of ***Glaxo Smith Kline Pharmaceuticals*** Ltd. (supra) which has been relied upon by the learned counsel representing the State would not be applicable. In this case, the manufacturer had not controverted the report and had not given the option to send the sample to the Central Government Laboratory for test. It was held that under these circumstances, the criminal proceedings, even if delayed beyond 03 years could not be held to be barred by limitation. Since no sample was sent in the present case to the manufacturer i.e. M/s G.S.Pharmaceuticals Pvt. Ltd. (it was manufacturing the drug for M/s Intas Pharmaceuticals Ltd.) and further, the request sent by M/s Intas Pharamaceuticals Limited was denied to have been received by the authorities, no benefit can be derived by the State from the said judgment.

From the aforesaid discussion, it is clear that the complaint in question was barred by limitation and was even otherwise violative of the

provisions of the Act as has been discussed in the preceding paragraphs.

In view of the above, both the petitions are allowed and the complaint dated 11/12.06.2014, filed under Section 18 (a) (i) punishable under Section Section 27(d) of the Drugs & Cosmetics Act, 1940 alongwith all consequential proceedings arising therefrom are quashed qua the petitioners.

(VIKRAM AGGARWAL)
JUDGE

31.05.2023
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No