

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35274-2022

Date of Decision: May 24, 2023

M/s Rohini Distributors and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Tanvir Singh Attariwala, Advocate for the petitioners.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C, petitioners have prayed for quashing of complaint No. COMA/30/2020 dated 18.05.2020 titled “State of Haryana through Drugs Control Officer Vs. Ritesh Chander Jain and others” (Annexure P.14), pending in the Court of learned Chief Judicial Magistrate, Panchkula, along with summoning order dated 18.05.2020 (Annexure P.15).

2. As per complaint, on receiving a letter from OIC Medical Store for Commandant, Command Hospital Western Command Chandimandir, Panchkula, Shri Parveen Kumar, Drug Control Officer, visited the medical store inside the Command Hospital and collected sample of **Azzirin** injection (Heprine Injection IP 25000 Unit) (Batch No. MCP 19388), manufacturing date 08/18, and expiry date 07/20, manufactured by M/s Health Biotech Ltd., Unit-II, Sandholi, for the purpose of test/ analysis from premises of In-charge Medical Store inside

Command Hospital, Panchkula as per rules. On analysis, the sample was found to be not of standard quality. Show cause notice was served to In-charge Medical Store, who in his reply disclosed that he had purchased the drug from M/s Rohini Distributor (petitioner) vide invoice dated 04.10.2018. Upon show cause notice served upon the petitioners, it was informed by them that they had purchased the drug from M/s Azzurra Pharmaconutrition Pvt. Ltd., vide invoice dated 20.09.2018. On serving show cause notice to M/s Azzurra Pharmaconutrition Pvt. Ltd., they intimated that they had purchased the drug from M/s Health Biotech Limited, Sandholi. However, the bill produced by M/s Azzurra Pharmaconutrition was having different batch number. Still the show cause notice was sent to M/s Health Biotech Limited, Sandholi. Their reply was obtained. Record was checked and it was found that they had neither manufactured nor supplied the drug in question to M/s Azzurra Pharmaconutrition Pvt. Ltd. of the specified batch. After obtaining necessary sanction, complaint (Annexure P.14) was filed against M/s Azzurra Pharmaconutrition Pvt. Ltd. and its authorised signatories or responsible person besides the petitioner M/s Rohini Distributors and its proprietor to prosecute them under Sections 16, 17, 17-B and 18-A read with Section 18(a)(i) and 18(a)(vi) of the Drugs and Cosmetics Act, 1940.

3. On the basis of material produced along with the record, learned Chief Judicial Magistrate, Panchkula found sufficient grounds to proceed against all the accused and ordered their summoning to face prosecution under Sections 16, 17, 17-B and 18-A read with Section

18(a)(i) and 18(a)(vi) of the Drugs and Cosmetics Act, 1940 (for short, 'the 1940 Act').

4. It is contended that petitioner No.1 is a duly licensed distributor in the business of sale, stock or distribute by wholesale, pharmaceuticals and surgical goods as per licence Annexure P.1 issued and renewed from time to time. Contention is that petitioners being simply licensed distributors of the drug in question are protected by Section 19(3) of the 1940 Act. It is contended that after receiving order from the Command Hospital for 900 units of injection Azzirin, they placed the order before respondent No.2 - M/s Azzurra Pharmaconutrition Pvt. Ltd. i.e. alleged manufacturer of the product. The said respondent No.2 prepared the invoice dated 20.09.2018 for delivery of the product, dispatched the same on 01.10.2018 and the same was received by the petitioner on 04.10.2018. On the date of delivery itself, the petitioner dispatched the stock of injection Azzirin to Command Hospital, though the receiving was issued by the Command Hospital on 05.10.2018. It is submitted that they delivered the medicine to the Command Hospital in the same condition as it was received, as there was no need even to store the same. In reply to the show cause notice, petitioners had stated these facts. They have paid back the amount against the sale of product to Command Hospital, and thus, complaint and the summoning order qua them is bad in law, having been issued by ignoring the provisions of Section 19(3) of the 1940 Act.

5. Learned State Counsel, on the other hand, defended the impugned summoning order by submitting that the trial is yet to take

place, where petitioners will get full opportunity to put forth the pleaded defence and that the learned Chief Judicial Magistrate, on the basis of material placed before it, found sufficient evidence to summon the petitioners.

6. I have considered the submissions of both the sides and have perused the record carefully.

7. Section 19(3) of the 1940 Act, on which counsel for the petitioner has relied, reads as under:-

19(3). A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.”

8. As will be evident on bare perusal of the above-said provision, the plea as referred in Section 19(3) of the 1940 Act can be raised only by a person other than the manufacturer of the drug or cosmetic, or his agent for distribution thereof.

9. Apart from above, such a person who is not the manufacturer of the drug or his agent for distribution, is required to prove that he acquired the drug/ cosmetic from duly licensed manufacturer, distributor or dealer; that he did not know or could not with reasonable diligence

have ascertained that drug/cosmetic did not in any way contravened the provision of Section and that drug or cosmetic while in his possession was properly stored and remained in the same state as and when he acquired it.

10. In the present case, as is pleaded by the petitioner himself, he is the duly licensed distributor involved in the business of selling, stocking or distributing of wholesale pharmaceuticals and surgical goods. The said fact is even evident from the licence Annexure P.1, as per which petitioner is a distributor, duly licensed to sell, stock or exhibit or offer for sale or distribute by wholesale drugs. In these circumstances, petitioner being the distributor of the drug on behalf of the manufacturer, cannot be allowed to take benefit of Section 19(3) of the Act on the plea that he had purchased the drug from respondent No.2 – M/s Azzura pharmaconutrition, the alleged manufacturers.

11. Learned counsel for petitioners has relied upon ***Radhey Sham Vs. State of Punjab, Law Finder Doc ID # 716125***, to support their case, but facts of that case are distinguishable, inasmuch as petitioner in that case had purchased the medicine from Amit medical agency, who was a licensed wholesale chemical and druggist and the drug was manufactured by M/s Tecad Pharma Private Limited. Thus, petitioner before this Court in **Radhe Sham's case (supra)**, was not the licensed dealer for the purpose of distribution of the drugs, as is the case of present petitioners

12. For the sake of arguments, even if it be assumed that petitioners are entitled to the exemption under Section 19(3) to avail the

benefit thereof, they are still required to prove not only the fact that they acquire the drug from duly licensed manufacturer (which fact has been admitted in the complaint) but are further required to show that they did not know or could not with reasonable diligence have ascertained that the drug or cosmetic in any way contravened the provisions of that Section and the drug while in their custody was properly stored or remained in the same state as and when they acquired it. The use of the word 'and' in between sub-clauses (b) and (c) of Section 19(3) clearly indicate that petitioners are required to fulfil both these conditions.

13. In this case, petitioners have been summoned on the basis of prima-facie material available on record by learned Magistrate by way of the impugned summoning order. Petitioners will get the opportunity to prove that they are entitled to invoke the exemption available under Section 19(3)(b) and (c) and if so, they fulfil the conditions as mentioned therein.

14. On the basis of afore-said discussion, the petition is found to be devoid of any merits and so, the same is hereby dismissed.

May 24, 2023

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(DEEPAK GUPTA)
JUDGE

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