

243 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45633-2019

Reserved on 22.03.2023

Pronounced on :-10.04.2023

M/s Meridian Medicare Ltd. and others

...Petitioners.

Vs.

State of Punjab

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjay Kumar Jain, Advocate and
Mr. Akshay Jain, Advocate,
for the petitioners.

Mr. Ravinder Singh, AAG, Punjab,
for respondent-State.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 read with Section 483 Cr.P.C., prayer has been made for quashing of criminal complaint bearing COMA No.4/2019 dated 05.02.2019 as well as summoning order dated 05.02.2019 passed by the court of learned Chief Judicial Magistrate, Mansa against the present petitioners.

The facts of the present case are that petitioner No.1 is a manufacturer company of various drugs having proper license under the Drugs and Cosmetics Act, 1940 read with Rules framed thereunder (for short, "Act"). Besides it, petitioners No.2 to 5 happen to be Directors of petitioner No.1-company. A complaint dated 05.02.2019, came to be filed against the petitioners, at the instance of respondent, invoking Section 18(a)

(i) read with Section 27(d) of the Act. It was stated in the complaint that during an inspection of the premises of M/s Shiva Medical Agencies, Water Works Road, Mansa, held on 18.03.2015, few samples of “Pency-D” medicines were taken by respondent and were sent to Government Analyst, Punjab, Chandigarh on 24.03.2015. A report dated 26.06.2015 was received thereupon by the respondent on 02.07.2015. It has also been submitted that on a request/application made at the instance of manufacturer, the second sample was sent for analysis to the Central Drugs Laboratory, Kolkata and a report was received on 07.07.2016 by the respondent, resulting into filing of the complaint, before the trial court on 05.02.2019.

Based on the aforesaid complaint, the petitioners were summoned to face trial under Section 18(a)(i) read with Section 27(d) of the Act vide order dated 05.02.2019 passed by the court of learned Chief Judicial Magistrate, Mansa.

Impugning the complaint as well as the summoning order dated 05.02.2019, relying upon the decisions rendered by Hon'ble the Supreme Court in case of “*Cheminova India Limited and another vs. State of Punjab and another*”, (2021) 8 Supreme Court Cases 818 and “*State of Rajasthan vs. Sanjay Kumar*”, 1998(3) RCR (Criminal) 846, besides, Section 468 Cr.P.C. as well as Section 27(d) of the Act, learned counsel for the petitioners submits that once the report of Government Analysts was received by the respondent on 26.06.2015, the complaint filed at their instance on 05.02.2019 was clearly barred by limitation and could not have been entertained at all by the learned trial court. In this regard, learned counsel for the petitioners refers to paragraph 13 of *Cheminova's* case

(supra) as well as paragraph 13 of **Sanjay Kumar's** case (supra), which are reproduced as under for reference:-

Para 13 of *Cheminova's* case (supra):-

“When it is clear from the language of [Section 469, Cr.PC](#) that the period of limitation shall commence on the date of offence, there is no reason to seek computation of limitation only from the date of receipt of report of the Central Insecticide Testing Laboratory, Faridabad. As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and the report of analysis was received on 14.03.2011, as such the said CrI.A.@S.L.P.(CrI.)No.4102 of 2020 date is said to be the crucial date for commencement of period of limitation. By virtue of the said report received on 14.03.2011 which states that the active ingredient of the sample was only to the extent 34.70% as against the labelled declaration of 40%, it is clear that it is the date of offence allegedly committed by the accused. Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under [Section 24\(4\)](#) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation.”

Para 13 of *Sanjay Kumar's* case (supra):-

“For the above reasons, in the instant case, the limitation for the purpose of [Section 468\(2\)](#) (c) will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under [Section 469\(1\)](#) (b) but not from February 29, 1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation under [Section 468\(2\)](#) (c). The High Court has missed this germane aspect erroneously took the date of commencement of the limitation as February 29, 1988, the date on which the samples were collected by the Drugs Inspector from accused No. 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.”

On the other hand, learned State counsel submits that the second sample was sent to the Central Drugs Laboratory, Kolkata for its analysis only on the request made at the instance of petitioner No.1-company. He further submits that the application in this regard was moved on 17.12.2015 and report thereupon was received on 07.07.2016 and, thus, limitation for the purpose of filing present complaint was to commence on the receipt of second report from the Central Drugs Laboratory, Kolkata. He also submits that from the samples taken at the time of inspection, the required ratio of the necessary ingredients, namely, Pantoprazole and Domperidone was 40 mg/tab and 10 mg/tab respectively, whereas, in the first report submitted by the Analysts, the component was found to be 25.04 mg/tab and 9.23 mg/tab respectively, and in the second report, submitted by the Central Drugs Laboratory, Kolkata, it was 29.31 mg/tab and 7.98 mg/tab, being, much below the labeled claim and, thus, it was apparent that an offence under Section 18(a) (i) of the Act was committed at the hands of petitioners.

I have heard learned counsel for the parties and gone through the paper book.

For the purpose of adjudication of present dispute, it may be necessary to delve upon Section 27(d) of the Act besides Sections 468, 469 Cr.P.C., which are reproduced hereunder for reference:-

Section 27(d) of the Act:-

27. 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,
(d) any drug, other than a drug referred to in

clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

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 a term exceeding one year but not exceeding three years.*

(3) 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.

469. Commencement of the period of limitation:-

(1) The period of limitation, in relation to an offence, 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”

Maximum punishment that would become imposable upon one being proved guilty of offence under Section 27(d) of the Act would be for a period of two years. Section 468 of the Cr.P.C. bars the concerned Court from taking cognizance after lapse of the period of limitation and the period of limitation as per 468(2)(c) is mandated to be three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. In the present case, the report of the Laboratory came into the hands of the Drugs Inspector on 02.07.2015 and thus, the limitation expired on 01.07.2018 while complaint was filed in this case by drug inspector on 05.02.2019 i.e. approximately after 7 months when period of limitation was over. Despite of there being no application for condonation of delay, summoning order dated 05.02.2019 was passed by the court of learned Chief Judicial Magistrate, Mansa against the present petitioners, which is clearly barred in view of the conjoint readings of the sections mentioned above as well as the law cited at the bar from the side of the petitioners.

On a specific query put to the respondent that on what ground, law laid down in ***Cheminova's*** case (supra) and ***Sanjay Kumar's*** case (supra) shall not be applied in present case, learned State counsel has not been able to carve out any differentiation. Therefore, the entire proceedings right from registration of the crime are rendered unsustainable being in

violation of Section 468 of the Cr.PC. as well as the judgments of Hon'ble Apex Court in *Cheminova's* case (supra) and *Sanjay Kumar's* case (supra).

For the aforesaid reasons, the Criminal Petition is allowed and criminal complaint bearing COMA No.4/2019 dated 05.02.2019 and all other consequential proceedings arising therefrom including summoning order dated 05.02.2019 passed by the court of learned Chief Judicial Magistrate stand quashed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

10.04.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No