

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61702-2023
Date of Decision: 07.12.2023

BRAJENDRA SHARMA AND ANOTHER ...PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bhrigu Dutt Sharma, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of Criminal Complaint No. COMA-34548 of 2022 titled as 'State of Punjab through Drugs Control Officer, Jalandhar Vs. Brajendra Sharma and others' under Sections 18(a)(i) punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as Act) instituted on 18.10.2022 (Annexure P-1) and the summoning order dated 15.11.2022 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Jalandhar, vide which the petitioners have been summoned to face trial in the said complaint.

Factual Background

2. The facts, as discernible from the record, are that respondent No. 2 inspected the premises of M/s Yash Medicos on 25.06.2020 and drew samples of 3 types of drugs for test and analysis stocked in the shop including "MAS Care Instant Hand Sanitizer" having Batch No. OBL-0026

and date of manufacturing as “May 2020” and date of expiry as “April 2022” manufactured by M/s Orchid Bio Tech Private Ltd. The seized material was divided in 4 equal portions and all the portions were sealed separately and were duly signed by respondent No. 2 and the proprietor of M/s Yash Medicos namely Vikrant Yash. One portion of the sample was sent to Government Analyst on 25.06.2020, who declared the sample as “Not of standard quality”, vide test report No. 1595 dated 07.07.2020. On the basis of test report, a notice was issued on 22.10.2020 (Annexure P-5) to M/s Orchid Bio Tech Private Ltd. along with test report seeking explanation. The petitioners sent a reply on 13.11.2020 (Annexure P-6). After obtaining the sanction from Joint Commissioner (Drugs), Punjab, a complaint dated 18.10.2022 (Annexure P-1) was made for prosecuting M/s Orchid Bio Tech Private Limited and the persons responsible for manufacturing, stocking and selling sub-standard sanitizer.

3. Learned Additional Chief Judicial Magistrate, Jalandhar on the basis of the material produced by respondent No. 2 has summoned the petitioners vide impugned order dated 15.11.2022 (Annexure P-2).

CONTENTIONS

4. Learned counsel for the petitioners, inter alia contends that the impugned complaint and the summoning order are liable to be quashed on the ground that the petitioners cannot be held vicariously liable on behalf of the company without specifying their role in day to day affairs and running of the company. No averment with regard to the petitioners being responsible in terms of Section 34 of the Act, has been made in the impugned complaint (Annexure P-1). Further reliance has been placed on copy of Form No. 26 under Rule 23 and 83 of the Drugs and Cosmetics

Rules, 1945, issued by said Drug Controlling and Licensing Authority dated 12.02.2015 (Annexure P-7), a perusal of which would clearly indicate that a list of the approved technical staff of the Company responsible for manufacturing and analysis of the product has been provided and names of the petitioners are not mentioned in the same.

5. Learned counsel for the petitioners further assails the impugned complaint (Annexure P-1) and summoning order (Annexure P-2) on the ground that the mandatory provisions contained in Section 23(4)(iii) of the Act have not been complied. Furthermore, the sample, which was seized by respondent No. 2 was never sent to M/s Orchid Bio Tech Private Ltd., as such, the statutory right of the petitioners for re-sampling, has been violated resulting into grave prejudice to the petitioner. Moreover, the shelf life of the seized material has expired on April, 2022, whereas the complaint was filed on 18.10.2022 and summoning order was also passed after the expiry of the seized drugs on 15.11.2022.

6. Learned counsel for the petitioner relies “*Laborate Pharmaceuticals India Ltd. Vs. State of Tamil Nadu, 2017 AIR (Supreme Court) 2423*” to emphasize that the valuable right of the petitioners to have the sample re-analyzed, has been suffocated especially when the shelf life of the seized drug has already expired. As such, the entire prosecution suffers from incurable illegality and non compliance of mandatory provisions have vitiated the entire proceedings.

CONCLUSION

7. Having heard learned counsel for the petitioners and after going through the record of the case, it transpires that the show cause notice was issued on 20.10.2020 (Annexure P-5) and M/s Orchid Bio Tech Private

Limited had sent a reply on 13.11.2020 (Annexure P-6) to the respondent No. 2, a perusal of the same would indicate that they had sent the controlled sample of the same batch, manufactured along with the seized drug, to Neutral Approved Laboratory. They had already issued the recall letter for the above-said sanitizer in the market and as of now, sanitizer having batch No. OBL-0026 is not available in the market. Further, it finds mentioned in the reply that *“We think due to bad storage condition, having flip lop cap that are not sealed & evaporate in nature, it may happen. We also inform you that we have not received any sample from your side for further action.”*

8. The stand taken by the petitioners in the present petition is totally converse to the stand taken in the reply. In the reply dated 13.11.2020 (Annexure P-6), no specific demand was made for a third sample for re-analysis, in terms of the provisions of the Act. Now the petitioners cannot be allowed to agitate the non compliance of the provisions of Section 23(4)(iii) of the Act. Moreover, reliance is placed on Form No. 26 (Annexure P-7) to contend that the petitioners are not the persons in-charge or responsible for the manufacturing of the drug in question but it cannot be relied at the stage on the *ipse dixit* of the petitioners and further, the reliance placed upon the judgment passed by a three Judge Bench in ***State of Haryana Vs. Brij Lal Mittal 1998(2) R.C.R. (Criminal) 608*** would also not be applicable in the facts and circumstances of the present case. This Court finds no force in the argument raised by the learned counsel for the petitioners as the disputed facts cannot be determined by this Court on the basis of the probable defence taken by the petitioners in the present petition.

It is settled law that disputed questions of fact can only be adjudicated after

the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C. is obligated to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, impeccable it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in **“Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another” 2022 SCC Online SC 513** and speaking through Justice Hrishikesh Roy, the following was observed:-

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 Cr.P.C. cannot be extended for determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence of record and interference by this Court with regards to factual questions is impermissible in law.

10. Keeping in view the discussion made above, no ground for interference is made out by this Court. The present petition is bereft of any merit and deserves dismissal.

11. However, the petitioners would be at liberty to raise all the pleas taken in the present petition before the learned trial Court at the appropriate stage during the course of the trial.

12. Nothing observed herein shall be construed as expression of an opinion on the merits of the case by this Court and the trial Court is directed to conclude the trial in accordance with law, without being prejudiced by observations of this Court.

13. The present petition is dismissed.

14. However, keeping in view that the petitioners are resident of Madhya Pradesh and the trial of the case is taking place at Jalandhar and the inconvenience caused to the petitioners on account of long distance travel, their personal appearance is exempted in view of law laid down in ***Suresh Kumar and another vs. State of Haryana and another, 2023(2) PLR 438***, subject to the following conditions:-

- i) Petitioner shall be represented through her counsel;
- ii) shall not delay/stall the trial proceedings;
- iii) shall not dispute their identity as accused;
- (iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of her counsel;
- v) shall appear before the trial Court as and when required; and
- vi) any other condition which the trial Court may impose.

07.12.2023
manoj

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No