IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106. **CRR No.241 of 2024 (O&M)**
Date of Decision:06.02.2024

Suresh Jindal and another ... Petitioners

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sapan Dhir, Advocate
for the petitioners.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed by the petitioners seeking quashing of the impugned order dated 06.11.2023 passed by the Judge, Special Court, Rupnagar vide which charges have been framed against the petitioners under Sections 17A, 18 (a) (i), 27 (b) (i) & 27 (c) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act of 1940).

2. In brief, facts are that petitioner No.2 Firm namely M/s Cosway Pharmaceuticals is engaged in the business of manufacturing of all kinds of tablets, capsules, oral syrups, ointments and other pharmaceutical products at Plot No.11-C, Industrial Area, Tahliwal, Tehsil Haroli, District Una (HP) as well as in sale/distribution of drugs specified in Schedule C & C (i) in Forms 25 & 28 under Licence No.N-MB/15/157 & N-MB/15/158 dated 03.03.2017 issued by the Assistant Drugs Controller-cum-Drugs Licensing Authority. Petitioner No.1 is one of the partners of the said firm. On 06.03.2020, petitioner No.2-Firm purchased raw material for manufacturing Cosway Hand Sanitizer from M/s

Mahaveer Agencies, Nalagarh along with testing report/analysis certificate dated 19.02.2020. On 16.03.2020, the abovesaid product was got approved from the Assistant Drugs Controller-cum-Drug Licensing Authority, District Kangra and after obtaining approval from the said authority, the said product 'Cosway Hand Sanitizer (Safe & Clean) bearing Batch No.C-02, Mft. Date: 4/2020, Exp. Date:03/2022 was got tested from the Central Government approved laboratory as well as the in-house testing on 24/25.04.2020, before releasing the same in the market. Copies of approval dated 16.03.2020 granted by the Licensing Authority and the Analysis Certificate dated 25.04.2020 are annexed with the present petition as Annexure P-3. Thereafter, after release of the product in the market, one of the retailers of petitioner No.2-Firm namely M/s Gupta Medical Agencies at Ropar purchased the same vide invoice No.040 dated 06.05.2020. On 08.05.2020, the Drug Inspector, Ropar inspected the premises of M/s Gupta Medical Agencies and obtained sample No.RPR/TS/2020/29 (four portions of 2x100 ml of Cosway Hand Sanitizer (Safe & Clean) (Isopropyl Alcohol, Carbopol, Carbopol, Triethanolamine, Glycerine & Chlorhexidine Digluconate Hand Sanitizer), Batch No.C-02, Mfg. Date:04/20, Exp. Date:03/2022 from the said premises. The said sample was sent to Government Analyst, Punjab, Chandigarh for testing and analysis on 11.05.2020, who vide report dated 29.06.2020 declared the sample in question as not of standard quality. On receipt of aforesaid report, the Drug Inspector enquired about the source from where the product was purchased by M/s Gupta Medical Agency and ultimately, it came forth that the product in question was manufactured by the petitioner No.2-Firm. Thereafter, vide letter dated 01.09.2020, the Drug Inspector, while sending the analysis report dated 29.06.2020 to the petitioners, had sought response of petitioners with respect to the same and to adduce evidence in

writing within 28 days of receipt of the letter. Vide letter dated 15.09.2020, petitioners replied that at the time of manufacturing, they had complied with all requirements as per the Act of 1940 and because they were not satisfied with the testing done, they requested for re-assessment of the sample as per the provisions of Section 25 (3) of the Act of 1940. However, despite specific request made by the petitioners for providing sample to them and without asking from them the working standard and method of analysis as per the guidelines of Central Drugs Standard Control Organization (CDSCO), the Drug Inspector sent the sample in question to the Central Drugs Laboratory, Calcutta on 11.01.2021, which gave report dated 04.08.2021 contrary to the earlier report dated 29.06.2020 given by Government Analyst, Punjab. Another sample from the same batch of the product was also sent to the Government Analyst, Chandigarh, who vide his report dated 05.09.2020, had reported the Isopropyl Alcohol as of standard quality. However, on the basis of the contradictory reports dated 29.06.2020 and 04.08.2021, the Drug Inspector launched prosecution against the petitioners by filing impugned complaint wherein vide order dated 09.06.2022, the learned Judicial Magistrate 1st Class, Ropar had summoned them to face trial. Thereafter, the case was committed to the learned Sessions Court and vide impugned order dated 06.11.2023, charges were framed against petitioners under Sections as mentioned above. Aggrieved by the order dated 06.11.2023, petitioners have approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 06.11.2023 passed by the learned trial Court is liable to be quashed on the following grounds:-

(i) Petitioners were not provided any information as to under what temperature the product was stored and in case, the seller did not

store the product in question at the regulated temperature, they cannot be held liable for any adulteration or degradation/substandardization, as the product in question is mainly based on Isopropyl Alcohol, which is a clear, colourless liquid alcohol. The product was required to be stored under proper temperature and covered storage condition otherwise there is every likelihood that it would evaporate. Moreover, the respondent has completely failed to adhere to the guidelines of CDSCO and got the sample tested without following the procedure provided by the manufacturer and duly approved by the Licensing Authority. Admittedly, before sending the sample to the Government Analyst and before analysis of the said sample, the Government Analyst did not ask for any procedure from the petitioners being manufacturer of the product.

(ii) Pursuant to letter dated 01.09.2020, petitioners had duly informed the respondent vide letter dated 15.09.2020 that they had tested the batch and complied with all requirements as per the Act of 1940 and the report declared the product to be of standard quality. As such, rechecking of the sample as per the provisions of Section 25 (3) of the Act of 1940 was sought and they also supplied each and every document in support of their request. However, the respondent did not make any effort to provide sample as per the provisions of the Act of 1940 and without asking petitioners with regard to working standard and method of analysis as per the guidelines of CDSCO, on his own, sent the sample to Central Drugs Laboratory, Calcutta on 11.01.2021.

(iii) In the absence of any information with regard to temperature and storage condition of the product in question at the time of obtaining sample by the respondent, petitioners cannot be held liable. Furthermore, sample was required to be tested as per the procedure provided by the manufacturer in terms of guidelines issued by the CDSCO. In the absence of above information, both the reports cannot be treated as conclusive to make petitioners liable within the meaning of Section 25 (4) of the Act of 1940. According to the petitioners, wrong protocol has been followed by both the laboratories for testing of the sample in question.

(iv) At the time of framing of charges, the learned trial Court was under obligation to sift the material and come to the conclusion whether there exists any *prima facie* case against the petitioner or not and cannot treat the case of the prosecution as gospel truth.;

(iv) In support of aforesaid contentions, counsel for the petitioners relies upon the judgments of various High Courts in ***M/s Elnova Pharma Village Moginand and others Vs. State of Himachal Pradesh 2022 (4) SimLC 2301; M/s Caplet India (P) Ltd. and another Vs. The State of West Bengal and others 1999 (1) Cal. H.C.N. 323; M/s Parkin Laboratories and others Vs. State of Rajasthan 2022 (3) RLW 2239*** and ***M/s Meri Odin Life Sciences and others Vs. State 2022 (2) Crl. L.R. (Raj.) 479.***

4. Having heard learned counsel for the petitioner and after perusing the record as well as the case laws cited, this Court finds no force in the argument advanced by the counsel appearing for the petitioners. The petitioners have challenged the order dated 06.11.2023 vide which charges are framed

against them. It is settled law that the primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. The Hon'ble Supreme Court in the judgments passed in ***State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659*** and ***State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338*** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of *prima facie* case. At the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial. Moreover, this Court cannot appreciate and decide the disputed question of fact and examine the veracity of defence set up by the petitioners in the present petition.

5. In view of the aforesaid facts and circumstances, no ground for interference is made out. Resultantly, the instant petition stands dismissed.

6. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

February 06, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No