



CRM-M-46106-2018

-1-

262

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

CRM-M-46106-2018

Date of Decision:- 09.09.2024

M/s Newtramax Healthcare and Another

.... Petitioners

Vs.

State of Punjab

.... Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Akshay Jain, Advocate (*through Video Conferencing*)
and Ms. Kajal, Advocate
for the petitioners.

Mr. Gautam Thapar, AAG, Punjab.

AMARJOT BHATTI, J.

Petitioner M/s Newtramax Healthcare through its authorized signatory Nitin Kumar Singh filed petition under Section 482 Cr.P.C. for quashing of criminal complaint No. 05 dated 20.02.2018, Annexure P-8, titled "State Versus Nitin Kumar Singh and another" and order dated 20.02.2018, Annexure P-10, whereby learned Chief Judicial Magistrate, Moga summoned petitioners for commission of offence punishable under Section 27(d) of Drugs and Cosmetics Act, 1940, being illegal, erroneous, unconstitutional and an abuse of process of law and for any other suitable order or direction which the Court may deem fit and proper in the peculiar facts and circumstances of case.

2. Facts of the case are State through Drug Inspector, Moga filed complaint against Nitin Kumar Singh and M/s Newtramax Healthcare under Section 18 (a)(i) punishable under Section 27(d) of Drugs and

**CRM-M-46106-2018****-2-**

Cosmetics Act, 1940. As per brief facts, on 27.04.2015, Omkar Singh, the then Drugs Inspector Moga-I inspected the firm namely M/s Okara Pharma, Gill Road, near Malhotra Generator, Moga where Ashwani Kumar partner and incharge of firm was present. On that day, Omkar Singh, the then Drugs Inspector in the presence of Ashwani Kumar took samples of tablet Evoxil-CV 625, tablet of Chymonet AP and capsules of Cap MK-FOL for the purpose of test and analysis mentioned on Form 17, as detailed in para No. 5 of complaint. Said samples were packed and sealed by Omkar Singh, the then Drugs Inspector Moga-I with his seal bearing impression "OSP" along with its detail in Form 17, in the presence of Ashwani Kumar. Inspection report was prepared by Drugs Inspector Moga-I, which was duly signed by Ashwani Kumar. On 29.04.2015, one sealed sample portion of each sample was sent to Government Analyst, Punjab, Chandigarh along with Memorandum on Form 18. Government Analyst, Punjab, Chandigarh declared sample No. MG/OSP/24/2015 as not of standard quality vide test report No. 2882 dated 30.11.2015 with regards to Folic Acid found to be 0.415 mg/capsule which is 83% against the labelled claim of 0.5 mg/capsule. Said Drugs Inspector sent registered letter dated 14.12.2015 along with test report to M/s Okara Pharma. Reply was received on 24.12.2015 alleging that they had purchased the same from M/s Srishti Pharma, Dada Nagar Complex, Mithapur Road, Jalandhar. Thereafter, Drugs Inspector had sent registered letter dated 29.12.2015 along with test report to M/s Srishti Pharma and in their reply dated 15.01.2016, it was alleged that they had purchased it from M/s Srishti Enterprises. Again, the then Drugs Inspector Moga-I sent registered letter dated 18.01.2016 to M/s

**CRM-M-46106-2018****-3-**

Srishti Enterprises along with test report and reply was received on 03.02.2016, alleging that they had purchased it from M/s Amazing Research Laboratories Limited. Again Drugs Inspector Moga-I had sent registered letter dated 04.02.2016 along with test report to M/s Amazing Research Laboratories Limited and in response to this, they filed reply dated 17.03.2016 alleging that they had purchased it from manufacturing firm M/s Newtramax Healthcare. Drugs Inspector Moga-I again sent registered letter dated 22.03.2016 along with test report to M/s Newtramax Healthcare. Thereafter, said Drugs Inspector Moga-I was transferred. On 06.06.2016, complete report of investigation was sent to State Drugs Controlling and Licensing Authority, Punjab, Chandigarh. Constitutional detail of aforesaid firms was called for. One reply dated 27.02.2017 was received from M/s Newtramax Healthcare which was found to be afterthought. After completing all formalities, complaint was filed, which is Annexure P-8.

3. Learned counsel for petitioner argued that as per Section 25 of the Drugs Act if the report of Government Analyst and procedure in case of sample drawn was not found to be conforming the standards laid down in Drugs Act, then as per Section 25(4) sample can be tested from Central Drugs Laboratory and that report shall be conclusive evidence of facts stated therein. It is argued that as per Form 17, Annexure P-1, capsules of Cap MK-FOL were manufactured in November 2014 and expiry date was April 2016. Drugs Inspector, Moga-I had sent letter along with test report on 22.03.2016, which is Annexure P-3 and postal receipt dated 28.03.2016 is Annexure P-4. M/s Newtramax Healthcare responded to said letter by

**CRM-M-46106-2018****-4-**

giving reply dated 25.04.2016, Annexure P-5, taking objection that report of Government Analyst was in violation of procedure prescribed under Rule 46 of Drugs and Cosmetics Rules. As per guidelines issued under Section 33-P of the Act, the Government Analyst should have asked for the method of analysis from manufacturer in case of patent or proprietary medicine. Petitioner had challenged the correctness of adverse report vide letter dated 25.04.2016 within stipulated period of 28 days from the receipt of report. It is pointed out that since the subject drug was highly thermolabile, sample was required to be stored in a condition as prescribed thereon. Sanction regarding prosecution was not given as per guidelines issued under Section 33-P of the Act by putting entire case file before Screening Committee. A representation was also given to State Drugs Controller-cum-Licensing Authority Joint Commissioner, Punjab dated 16.02.2017, Annexure P-6. It is further objected that complainant was not notified as Drugs Inspector in terms of Section 21 of the Act in the specified area to which the matter pertains. One Punjab Government Gazette Notification dated 14.11.2011 is placed on record as Annexure P-9. Therefore, complaint was filed in violation of mandatory provisions of Drugs and Cosmetics Act and summoning order was passed without proper application of judicious mind. Therefore, complaint, Annexure P-8 and summoning order, Annexure P-10, be quashed by accepting present petition.

4. Present petition is opposed by State of Punjab through Drugs Inspector and detailed status report has been filed, taking stand that proper procedure was followed while drawing samples and sending the same to

**CRM-M-46106-2018****-5-**

Government Analyst, Punjab, Chandigarh for the purpose of testing. Test report is Annexure P-2. Government Analyst, Punjab, Chandigarh vide its letter No. 312 dated 02.11.2015 demanded method of analysis from the petitioner manufacturing firm, which is Annexure R-1 and firm in its reply provided the same to Government Analyst, Punjab, Chandigarh vide letter dated 06.11.2015, Annexure R-2. As detailed in complaint, on receipt of test report, registered notices were sent to all concerned including M/s Newtramax Healthcare. No reply was received from manufacturing firm/petitioners regarding the notice served upon them. Ultimately, complaint was filed after following proper procedure against petitioners under Section 18 (a)(i) punishable under Section 27(d) of Drugs and Cosmetics Act, 1940 and Rules, 1945. Apart from this, notification dated 05.02.2013 and transfer orders of Government of Punjab, Department of Health & Family Welfare are also placed on record as Annexures R-5/T and R-6/T respectively. Petition filed by petitioners is without merits and same deserves dismissal.

5. I have considered the arguments advanced by learned counsel for petitioners as well as learned counsel representing State of Punjab. I have also carefully gone through the documents annexed with petition as well as documents annexed with status report. As per the facts, Omkar Singh, the then Drugs Inspector, Moga-I on 27.04.2015 had drawn samples for the purpose of testing from firm M/s Okara Pharma, Gill Road, near Malhotra Generator, Moga. Samples were drawn in the presence of Ashwani Kumar, Incharge of firm which were duly sealed and inspection report was prepared in the presence of Ashwani Kumar, Incharge of firm. Samples

**CRM-M-46106-2018****-6-**

were sent to Government Analyst, Punjab, Chandigarh for the purpose of testing on 29.04.2015 and as per test report No. 2882 dated 30.11.2015, Folic Acid was found to be 0.415 mg/capsule which was 83% against the labelled claim of 0.5 mg/capsule. Expiry date of Cap MK-FOL was April, 2016. On receipt of this test report, registered notice was sent to M/s Okara Pharma on 14.12.2015 and thereafter, on receiving reply from M/s Okara Pharma, notices were sent to M/s Srishti Pharma, M/s Srishti Enterprises, M/s Amazing Research Laboratories Limited and finally to M/s Newtramax Healthcare, present petitioner. As per the case of petitioners, on receiving notice, they had given reply on 25.04.2016, Annexure P-5 and representation was also given to Joint Commissioner (Drugs), Punjab vide letter dated 16.02.2017, Annexure P-6. On the other hand it is the case of complainant that no response was received from petitioners except reply dated 27.02.2017. Therefore, it is matter of evidence during trial as to whether petitioners/accused responded to notice dated 22.03.2016 received by them or not.

6. During the course of arguments, learned counsel for petitioners referred to storing conditions of samples as well as manner the sample was tested by Government Analyst. In response to this, respondent-State in their status report referred to letter written by Government Analyst, Punjab to M/s Newtramax Healthcare dated 02.11.2015 to supply complete method of analysis along with reference working standard and protocols of test applied, which is Annexure R-1 and M/s Newtramax Healthcare responded by giving reply to Government Analyst, Punjab dated 20.11.2015, Annexure R-2.

**CRM-M-46106-2018****-7-**

7. Petitioners also raised objection regarding grant of sanction for prosecution as well as competence of said Drugs Inspector, Moga-I to draw samples for the purpose of analysis.

Aforesaid objections raised by learned counsel for petitioners require evidence and can be adjudicated by appreciating evidence led by both the sides.

8. Therefore, in the light of aforesaid discussion, I do not find a fit case for quashing of complaint No. 05 dated 20.02.2018 (Annexure P-8). So far as impugned order, Annexure P-10 is concerned, same is not summoning order. In-fact, this is an interlocutory order, according to which Nitin Kumar Singh accused had appeared through his counsel and since offence was bailable, he was granted bail by learned Chief Judicial Magistrate, Moga vide order dated 20.08.2018. Order vide which petitioners/accused were summoned in complaint, is not annexed with present petition.

9. Finding no merits in the petition filed by petitioners, same is dismissed.

10. My above observations are made only for the disposal of present petition and same will have no bearing on the merits of case.

11. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

09.09.2024*lalit***(AMARJOT BHATTI)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No