2024:PHHC:163107

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

**CRM-M-31977-2024
DECIDED ON: 08.07.2024**

KARAN PAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manoj Kaushik, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J

1. Relief sought

The jurisdiction of this Court under Section 482 Cr.P.C. has been sought seeking quashing of impugned criminal complaint No. COMA/48946/2023, dated 27.09.2023, under Section 18 (a) (i) read with Section 84-E punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'Act of 1940' in short) and its Rules of 1945, pending before the Chief Judicial Magistrate, Ludhiana as well as quashing of order dated 27.09.2023 (Annexure P-2) passed by Chief Judicial Magistrate, Ludhiana.

2. Brief facts

Factual matrix as setforth in the petition would suggest that the petitioner is a proprietor of M/s Evertouch Bio Remedies having permission to manufacture for sale/distribution of Drugs specified in Schedule C and C (1) (Excluding those specified in Schedule X) vide licence No. 08/SC/P of 2018, dated 27.09.2018 (Annexure P-5) issued by the Drug Licensing and Controlling Authority, Uttar Pradesh. Within the parameters of license so granted M/s Evertouch Bio

Remedies is manufacturing Rosmoxclav-625 tablets and Roxim-CV tablets which were purchased by M/s Veer Pharma, Ludhiana on 16.03.2022 from M/s Mexford Healthcare Mumbai vide sale invoice which is on record with the complaint as well.

It is on 30.03.2022, an inspection was carried out by the Drug Inspector, Ludhiana-IV at M/s Veer Pharma, Ludhiana in the presence of firm incharge Sh. Deepak Mehan who collected two samples each on Form No.17 of Rosmoxclav-625 tablets and Roxim-CV tablets for test. In the instant petition it is the first sample i.e. Rosmoxclav-625 tablets is in question which was sent to Government Analyst Punjab along with Form No.18 on 30.03.2022 itself through an ordinary courier-via-Indian Postal Receipt dated 01.04.2022 which was received on 07.04.2022 by the Government Analyst, Punjab. The report dated 10.05.2022 after testing the aforesaid sample, opined that "**not of standard quality**" for the reason that the contents of amoxycillin found to be 361.52 mg (72.30% per tablet) against labelled claim of 500 mg per tablet and the contents of calvulanix acid found to be 96.69 mg as against 125 mg per tablet mentioned on the label. It is with these allegations the complaint dated 27.09.2023 came to be filed against the petitioner under Section 18(a)(i) read with Section 84-E punishable under Section 27(d) of the Act of 1940 in the Court of Chief Judicial Magistrate, Ludhiana.

3. <u>Contentions</u>

<u>On behalf of the petitioner</u>

The petitioner has sought quashing of such complaint (Annexure P-1) and the order dated 27.09.2023 (Annexure P-2) whereby the CJM, Ludhiana has taken cognizance of the complaint and issued notice to the petitioner-accused.

The foremost contention raised by the petitioner to assail the complaint and the order of summoning the accused-petitioner is on account of inordinate delay to file the complaint after more than 1 year and 04 months from the date of receipt of the Analyst report dated 10.05.2022 (Annexure P-4) wherein summoning was made vide order dated 27.09.2023 claiming his statutory right being defeated to get the sample tested as per Sections 25(3) & 25 (4) of the Act of 1940.

It is further submitted that as per Act of 1940, there are guidelines for handling and storing samples to ensure their integrity and these protocols has not been followed as the sample in question was received by the Government Analyst Punjab on 07.04.2022 after being sent via ordinary courier on 01.04.2022, meaning thereby, six days spent in transit with all probability of it having been exposed to heated conditions prevailing in this part wherein the sample was required to be maintained in a temperature at less than 30°C during the period 30.03.2022 to 10.05.2022.

The petitioner has also disputed asserting that if the sampling is done at controlled and required temperature then only the proper sample results could come but in the instant case there is nothing to show on record in the complaint or in the Form 17 vide which the sample was collected, Form 18 while sending the sample for testing to Government Analyst, Punjab as well as report dated 10.05.2022. It is lastly argued on behalf of the petitioner that through DCC guidelines on drugs not of standard quality, 1993, the definition would envisage that wherein tablets with assay below 70% for thermolabile products would qualify as category A defects liable for prosecution for manufacturing drugs "not of standard quality" which has been adopted and reiterated by the Central Drugs Standard Control Organization vide amendment Act of 2008 which would mean that if the contents of active ingredients are found to be less than 70% for thermolabile products only in that eventuality prosecution can be recommended.

The assertion is that the sampling process and handling procedures may have violated guidelines, potentially impacting the validity of the test results, which could have significant implications for regulatory actions or legal proceedings. It is also the argument that the thermolabile product (amoxicillin and potassium clavulanate) requires storage at 25°C, as indicated on every strip whereas temperature was not maintained during sampling and shipping, potentially compromising its integrity. While concluding the submission, it is lastly argued to seek quashing of the complaint also on the ground that there is a delay of more than one year in filing the present complaint on account of which his statutory right of getting the sample tested, as envisaged under Sections 25(3) and (4) of the Act of 1940.

Heard learned counsel for the petitioner and examined the material on record.

4. Analysis

The principles of exercising the jurisdiction under Section 482 of Cr.P.C. were laid down by the Apex Court in the case of "***Gulam Mustafa v. State of Karnataka"*, 2023 SCC OnLine SC 603** wherein it was observed:-

> *26. Although we are not for verbosity in our judgments, a slightly detailed survey of the judicial precedents is in order. In* ***"State of Haryana v. Bhajan Lal"*, 1992 Supp (1) SCC 335***, this Court held:*
>
> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their rt entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable*

offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in . any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."(emphasis supplied)

It was laid down in "***CBI v. Aryan Singh***", ***2023 SCC OnLine SC 379***, that the High Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of Cr.P.C. while observing :

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini-trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini-trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not of proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial based on the evidence led by the rt prosecution/investigating agency. Therefore, the High Court has materially erred in going into detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

In ***"V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu" [(2019) 14 SCC 568]***, the Hon'ble Apex Court again affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.

In "***Neeharika Infrastructure (P). Ltd. v. State of Maharashtra",*** Criminal Appeal No. 330 of 2021, decided on 13.04.2021, a 3-Judge Bench of the Hon'ble Apex Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It is also noticed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the of allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self- restraint be imposed by law, and more particularly in the light of parameters laid down by the Hon'ble Apex Court in "***R.P. Kapur v. State of Punjab" (AIR 1960 SC 866) and "State of Haryana v. Bhajan Lal" [(1992) Supp (1) SCC 335]***, the Court would have jurisdiction to quash the FIR/complaint.

It is apparent from these judgments that power under Section 482 of Cr.P.C. can be exercised to prevent the abuse of process or secure the ends of justice. The Court can quash the F.I.R. if the allegations do not constitute an offence or make out a case against the accused. However, it is not permissible for it to conduct a mini-trial to arrive at such findings.

5. Conclusion

Now coming back to the case in hand, it can be culled out that the argument qua non-fulfilment of ingredients to constitute the offence not satisfied, cannot be accepted. Section 18-A of the Act of 1940 mentions that every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic is liable for the commissioning of offence and if found guilty should be punished as per Section 28 of the Act of 1940.

Another aspect is to be noticed that the accused had provided the invoice of a non-existent firm which means that he had not disclosed the correct and actual address of the source from where the drugs were obtained.

Rule 65 of The Drugs Rules (hereinafter referred to as "Rules of 1945 in short) provides the condition of the license of which sub-Rule (3) categorically requires that the record of the purchase of the drugs intended for sale or sold by retail shall be maintained by the licensee whereas sub-Rule (6) stipulates that the licensee shall produce all registers and records maintained under the Rules.

It is an admitted fact that a record of the sale and purchase was not maintained and was not produced and there is a violation of Section 65, which is punishable under Section 27(d).

Now coming to the question of limitation, the quantum of punishment has to be borne in mind which is prescribed to be of two years for an offence if committed under Section 27(d) of the Act of 1940, which reads as under:

> *"Section 27(d) of the Drugs and Cosmetics Act 1940, reads as under:*
> *27. Penalty for manufacturer, sale, etc., of drugs in contravention of this Chapter.--Whoever, himself or by of any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,*
> *XXX XXX XXX XXX XXX XXX*
> *(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."*

It was laid down by the Hon'ble Supreme Court in "***State of Rajasthan v. Sanjay Kumar", (1998) 5 SCC 82***, that the period prescribed under Section 468 of Cr.P.C. will start running from the day when the Drug Inspector comes to know of the violation of the Drugs Act. It was observed:-

> *6. In the Code of Criminal Procedure, 1973, Chapter XXXVI has been added prescribing limitations for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observance of the principle of fairness in the trial of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword*

hanging on the heads of accused persons and it also results in the material evidence getting vanished. This chapter applies to all such offences for which the punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12 of 1974 or any State Acts. It contains seven sections (467- 473).

Section 467 defines the expression "period of limitation" used in the chapter.

Section 468 creates a bar for taking cognizance of offences after a lapse of a period of limitation.

Sections 469 to 473 deal with various aspects of computation of limitation. Of the aforementioned provisions, we are concerned with Sections 468 and 469.

Sub-section (1) of Section 468 ordains that no court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the "period of limitation" prescribed thereunder. This, however, is subject of to the other provisions of the Code.

Sub-section (2) postulates different periods of limitation for offences with reference to the punishment provided for them; if the punishment provided for an offence in any Act is only fine, rt the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years.

And subsection (3) spells out the rule of limitation in cases of joinder of charges; if a person is tried for more offences than one, then the period of limitation will 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; for example, if a person is tried for various offences and some of them are punishable with fine and some with imprisonment for a term less than a year and some for which the punishment is provided up to three years, then the period of limitation for all the offences, if they are tried together, will be three years."

7. Section 469 deals with the commencement of the period of limitation and it reads thus:

"469. Commencement of the period of limitation.--

(1) The period of limitation, in relation to an offender, 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.

8. A plain reading of the provision extracted above shows that in sub-section (1) three alternative starting points of limitation have been specified --

(a) the date of the offence;

(b) the first day on which an offence came to the knowledge of the person aggrieved by the offence or to any police officer, whichever is earlier, in a case where the commission of the offence was not known to any of them, or

(c) 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, but this can be called in aid in a case where it is not known by whom the offence was committed. Basically from the date of the offence, the period of limitation will start but there will be cases where the commission of offence or identity of the offender comes to the knowledge of those concerned with it long thereafter so in such situations clauses (b) and (c), as the case may be, would be the date of commencement of period of limitation.

9. Now we shall see which clause of sub-section (1) of Section 469 is attracted to the facts of the case. For this purpose, it will be necessary to revert to the facts of this case. The essence of the offences charged is the manufacture of adulterated, sub-standard, misbranded, spurious drugs within the meaning of the relevant provisions of the Act and/or *storage, distribution and sale of such drugs in contravention of the provisions of the Act. On the date of collection of samples from Respondent 16, on 29-2-1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the . quality of the drugs was not known to the Drugs Inspector, the complainant on that date. It is only when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So on the facts of this case, it cannot be said that clause (a) of Section 469(1) is attracted. That the drugs which were offered for sale were sub-standard/adulterated within the meaning of the Act, came to the knowledge of of the Drugs Inspector only on 2-7-1988 when the report of the Government Analyst was received by him; and therefore, clause (b) of Section 469(1) will be attracted.*

10. Under cognate legislations of different States, similar questions arose before the High Courts. In R.S. Arora v. State [1987 Cri LJ 1215 : (1987) 1 FAC 283 (Del)] the question which fell for consideration of the Delhi High Court was whether, for prosecution under Sections 7, 19 and 16(1) of the Seeds Act, 1966, the period of limitation of six months would start from the date of collection of samples under clause (a) or from the date of Seed Analyst's report for purposes of clause (b) of Section 469(1) CrPC. The learned Single Judge of the Delhi High Court took the view that the limitation commences from the date of submission of the report by the Seed Analyst to the Inspector, so Section 469(1)(b) would apply. The same view was taken by the Bombay High Court in Omprakash Gulabchandji Partani v. Ashok [1992 Cri LJ 2704].

Both the learned Courts below have proceeded on the basis that the Drug Inspector had applied for the prosecution sanction, which was accorded on 05.02.2009. The period spent in obtaining the sanction has to be excluded and the complaint filed by the Drug Inspector on 03.08.2009 is within limitation.

A perusal of Section 32 of the Act of 1940 shows that prosecution can be instituted by an Inspector or by any Gazetted Officer of the Central Government or a State Government authorised in writing in this behalf by the Central

Government or a State Government by a general or special order made in this behalf by that Government or the person aggrieved or a recognised consumer association whether such person is a member of that association or not. This section stipulates that sanction has to be obtained under Chapter IV of the Drugs and Cosmetics Act, 1940. Admittedly, the petitioner is accused of an offence covered under Chapter IV of the Drugs and Cosmetics Act, 1940. Section 32 of the Drugs and Cosmetics Act, 1940 only stipulates as to who is authorised to file a complaint. The complaint in this case is filed by a Drug Inspector whose authorisation is not required. Section 32 of the Drugs and Cosmetics Act, 1940 does not require sanction to be obtained from the competent authority for filing the complaint.

Now, to examine as to whether the complaint has been filed within the period of limitation Section 468(2) of Cr.P.C. needs to be looked, which reads as under:-

> *(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.*

The reading of said provision crystallize that it provides a limitation of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Hence, a limitation period of three years will apply to the present case.

In the present case the report has been received by the Drug Inspector on 10.05.2022 and, therefore, the terminus a quo for limitation would start from 10.05.2022. The complaint which has been filed on 25.09.2023 is, therefore, clearly within the period of limitation, which would expire at the conclusion of three years from the date of knowledge i.e., started on 10.05.2022 and finished on 09.05.2025, as prescribed under section 468(2)(c) of Cr.P.C.

Now to scrutinize the next contention as far as it relates qua the valuable right that flows vide Section 25(3) & (4) of the Act of 1940, which provides for getting the sample tested within 28 days of the receipt of a copy of the report, after it is notified in writing by the Inspector or the Court showing intention to adduce evidence in contravention of the report is concerned, the report was notified vide letter dated 27.05.2022 by the Drugs Controller Officer, Ludhiana-4. As such the petitioner was supposed to show its intent within 28 days of this notification, but before this Court, the reply to said notice placed at Annexure P-6 is dated 27.06.2022, which is also beyond the period of 28 days and as such this argument is also of no help to the cause of present petitioner.

Lastly the contentions that the samples are allegedly were not maintained as per DCC guidelines on Drugs not on standards quality, 1993 is concerned, which stipulate such thermolabile products with less than 70 % of active ingredients required to be stored at 25°C is without any cogent material before this Court to be adjudicated in exercise of jurisdiction under Section 482 Cr.P.C. Such question can be answered after testing the assertions on the basis of all relevant material whatever is adduced in evidence upon which this Court is not required to sit over and examine as a Court of trial, as has been discussed in the earlier part of this judgment while taking support of numerous judicial pronouncements made by the Hon'ble Apex Court including ***Gulam Mustafa (Supra) as well as CBI vs. Aryan Singh (supra) and Niharika Infrastructure (P) Ltd. (supra)***.

6. <u>Decision</u>

In the light of above-said discussions based on material before this Court, and the case law taken into consideration as a guiding factor, the present case has failed on two legal aspects i.e., firstly on the ground of limitation and secondly right to adduce evidence contravening the report of analyst whereas on the 3rd issue the facts are of such disputed nature, which needs to be put to trial and can be adjudicated after seeing the evidence accordingly.

Hence, the present petition is ordered to be dismissed with no order as costs.

(SANDEEP MOUDGIL)
08.07.2024 **JUDGE**
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No