

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-56020 of 2023
Date of Decision: January 30, 2024

M/s Theramax Laboratories and others

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Akshay Jain, Advocate
for the petitioners

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present petition under Section 482 Cr.P.C. is for quashing of criminal complaint bearing COMA No. 58 of 2018 dated 05.09.2018 (Annexure P-11), *State of Punjab through Drugs Inspector vs. Arun Kumar and others*, subsequently registered as Sessions Case No. 228 of 2021 pursuant to the order of committal dated 04.10.2021 (Annexure P-13) passed by the learned Chief Judicial Magistrate, Mansa and all consequential proceedings arising therefrom.
2. Learned counsel for the petitioners *inter alia* contends that the sample was not sent to the petitioners in terms of Section 23 (4) (iii) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act'). The provision is mandatory in nature, which requires the sample portion to be sent to the manufacturer. The uncontroverted facts as discernible from the pleadings especially Annexure P-9 would show that a show cause memo along with a copy

of test report was sent to the petitioners on 02.02.2016. Moreover, it is not disputed that the sample was supplied to M/s Suresh Medical Agencies, Bathinda and not to the petitioners firm. Learned counsel for the petitioners further submits that the case of petitioners is squarely covered by the ratio of law as laid down by Hon'ble Supreme Court in case *Laborate Pharmaceuticals India Limited and Others Vs. State of Tamil Nadu reported as (2018) 15 SCC 93*. He also places reliance upon judgments passed in *Northern Mineral Limited vs. Union of India and another, (2010) 7 Supreme Court Cases 726*, *Medicamen Biotech Limited and another vs. Rubina Bose, Drug Inspector, (2008) 7 Supreme Court Cases 196*, *Lalankumar Singh and others vs. State of Maharashtra, 2022 SCC Online SC, 1383*, *Zest Pharma and others vs. Drug Inspector and another, 2013 SCC Online Ker 16632* and *Suo Moto vs. State of Kerala, 2019(4) Ker L.J. 849*.

3. Per contra learned State counsel submits that the complainant has complied with the provision of Section 18-A of the Act and first notice was issued on 01.11.2015 and second notice was issued on 02.02.2016 and the petitioners have not expressly shown his intention to adduce evidence in contravention of the report.

4. Having heard learned counsel for the parties and after perusing the record, it transpires that the notice dated 02.02.2016 served by the complainant through registered post was sent without the sample, only a sample report was provided. The petitioners referred to Annexure P-10 to show that the controlled sample of the concerned batch was tested and it was found to contain 95.2% of Tramadol Hydrochloride and it was clearly indicated that there has been lapse in extraction of the sample and their product is of standard quality. Yet, the

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complainant for the reasons best known to him did not comply with the mandatory provision of Section 25(3) of the Act and ultimately filed the complaint (supra) after the shelf life of the seized drug had expired. It is a trite law that sending of sample portion to the person whose name has been disclosed under Section 18-A of the Act is not an empty formality rather it is required to be mandatorily followed. The word 'shall' under Section 23 (4) (iii) of the Act provides for mandatory compliance. Admittedly, the complaint was filed on 05.09.2018 and the cognizance of the offence under Section 27(d) of the Act was taken by the learned Magistrate on the same day and case was committed on 04.10.2021 i.e. after the expiry of the shelf life of the drug, therefore, the indefeasible right of the petitioners to get the sample reanalyze has been suffocated.

5. In view of the aforementioned facts and circumstances and the law laid down in *Laborate Pharmaceuticals India Limited (supra)*, the present petition is allowed. The impugned complaint dated 05.09.2018(Annexure P-11) and order of committal dated 04.10.2021 (Annexure P-13) and all consequential proceedings arising therefrom are quashed.

(HARPREET SINGH BRAR)
JUDGE

January 30, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No