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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58294-2023
DECIDED ON: 08.11.2024

VINOD KUMAR DHAWAN

.....PETITIONER

VERSUS

UNION OF INDIA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. HPS Sandhu, Advocate
for the petitioner.

Ms. Promila Nain, Sr. Panel Counsel and
Ms. Harveen Mehta, Advocate
for the respondent-UOI.

SANDEEP MOUDGIL, J (ORAL)

Relief sought

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking quashing of Criminal Complaint No.COMA-4-2022 titled as "Union of India vs. M/s Edwin Biotech" under Section 18(a)(i), 18(a)(vi), 18(c) r/w section 16 and 27(d) of the Drugs and Cosmetic Act, 1940("in short referred to as the Act of 1940") pending before the Chief Judicial Magistrate, Mohali (Annexure P-1), the summoning order dated 02.02.2022 (Annexure P-6), order dated 23.11.2022 (Annexure P-8) vide which application for amendment of the complaint has been allowed and further for quashing of Amended complainant dated 19.09.2022 (Annexure P-9) and order dated 07.08.2023 where by Notice of Acquisition has been

issued/ Charges have been farmed against the petitioner (Annexure P-10) and all subsequent proceedings arising therefrom.

Factual matrix

2. At the relevant time, the petitioner, Mr. Vinod Kumar Dhawan, was serving as the Approved Manufacturing Chemist for M/s Edwin Labs, a duly registered company with its Registered Office and Manufacturing unit located at Plot No. 517, Industrial Area, Phase-9, Mohali, Punjab. M/s Edwin Labs, established on 26th December 2013, is a diversified pharmaceutical company focused on research and development, known for its commitment to quality and maintaining a strong reputation in the industry. The present case arises from a complaint filed by the Respondent, Sh. Fahim Khan, Drug Inspector, C.D.S.C.O, Sub Zone, Baddi, Himachal Pradesh (hereinafter referred to as "the complainant"), alleging that a product named *Fungal Diastase with Pepsin Syrup* (ENZYAL) Batch No. DEL-3864, with a Manufacturing Date of 09/2016 and an Expiry Date of 08/2017 (200 ml each), manufactured by M/s Edwin Labs, was allegedly seized for sampling on 26.09.2016. According to the complainant's account, on 26.09.2016, the then Drug Inspector, Sh. V. Kaviyarasan, visited the premises of M/s Edwin Labs, where, in the presence of the petitioner, Mr. Vinod Kumar Dhawan, samples of *Pepsin Syrup* (ENZYAL), Batch No. DEL-3864, were collected. The sample was divided into three portions of 200 gm each, and the petitioner, Mr. Dhawan, signed the necessary sample forms. Form No. 17, which was prepared on the spot and signed by the petitioner, documented the sampling process. One portion of the sealed sample was handed over to the petitioner, in compliance with Section 23 of

the Act of 1940. Following the sampling, one sealed sample along with signed Form No. 18 was sent to the Government Analyst at the Regional Drug Testing Laboratory, Sector-39, Chandigarh, on 27.09.2016, of which the report came on the 13.02.2017. The complaint further claims that show cause notices were subsequently issued to the manufacturing company. In response to these notices and at the request of an authorized representative of M/s Edwin Labs, the sample was sent for retesting to the Central Drug Laboratory in Kolkata, pursuant to Section 25(3) Act of 1940. The report from the Central Drug Laboratory, Kolkata, dated 12.09.2017, confirmed that the sample was "NOT OF STANDARD QUALITY."Hence present complaint.

Contentions

On behalf of Petitioner

3. Learned counsel for the petitioner contends that the impugned summoning order dated 02.02.2022 (Annexure P-6) passed by the Trial Court, is flawed due to the following reason as examination of the impugned complaints, including the amended version, reveals a complete lack of merit against the petitioner. It is asserted that no specific allegations have been made against the petitioner, and that the petitioner's name has been included in the complaint in a purely mechanical and erroneous manner. Furthermore, the documents on record clearly demonstrate that the allegations are groundless, and the complainant has failed to establish any criminal liability or offence committed by the petitioner.

4. Secondly, the Learned Trial Court committed a significant error by summoning the petitioner without addressing the delay of over four years

in filing the complaint. The court issued a summons to the petitioner for trial without the complainant seeking condonation for the delay. It is crucial to note that the proceedings originating from Complaint No. 4 of 2022 are time-barred. In issuing the impugned order on 02.02.2022 (Annexure P-6), the court failed to consider whether the complaint was barred by the limitation period under Section 468(2)(c) of the Code of Criminal Procedure (Cr.P.C.). The complainant had a three-year limitation period to initiate the prosecution, and the present complaint, which alleges offences under various sections of Act of 1940, should have been filed no later than 12.02.2020. The court overlooked the fact that the limitation period had already expired, thus rendering the complaint invalid.

5. The petitioner's contentions are supported by the Hon'ble Supreme Court's observations in ***"Cheminova India Limited and Another v. State of Punjab and Another (2021) 8 SCC 818".*** In Paragraph 13, the Court held that, under Section 469 of the Cr.P.C., the limitation period begins from the date of the offence, not from the date of receipt of the report from the Central Insecticide Testing Laboratory. The report from the Insecticide Testing Laboratory in Ludhiana, received on 14.03.2011, marked the commencement of the limitation period, as it revealed the offence of misrepresentation regarding the active ingredient's percentage. The subsequent report from the Central Laboratory, received on 09.12.2011, could not reset the limitation period.

6. It has been further contended that the complaint fails to specify how the petitioner, at the time of the alleged offence, was responsible for or in charge of the operations of *M/s Edwin Labs*. The complainant's

allegations do not constitute an offence and do not meet the statutory requirements of Act of 1940, or its associated Rules in relation to the Petitioner's involvement in the purported violation.

7. It is further submitted that the prosecution's complaint was filed against *M/s Edwin Biotech* and its partners, which is entirely unrelated to the alleged drug sample of *Fungal Diastase Pepsin Syrup (ENZYAL)*, which was manufactured by *M/s Edwin Labs*. These two firms are distinct entities, operating at different locations, and have no connection to one another. The petitioner was summoned as a partner of *M/s Edwin Biotech* in the order dated 02.02.2022 (Annexure P-6), as indicated by the memo of parties attached to the complaint. However, after the summons were issued, the complainant, in an attempt to address gaps in the complaint, filed an application for amendment on 19.09.2022 (Annexure P-7), which was wrongfully allowed by the trial court on 23.11.2022 (Annexure P-8). The trial court failed to consider that the Cr.P.C. does not permit amendments to criminal complaints, especially after cognizance has been taken, as established by settled law. This argument is supported by the Supreme Court's judgment in ***"S.R. Sukumar v. S. Sunaad Raghuram (2015) 3 R.C.R. (Criminal) 570".***

On behalf of the respondent

8. Per contra, learned counsel appearing on behalf of the respondent/Union of India would argue that petitioner has rightly been summoned to face trial under the Act of 1940 and had the petitioners been truly effected by their summoning they could have filed appeal before the

trial court for their wrong summoning and rather no accused person preferred the appeal and kept on waiting for the framing of the charges.

9. It is further asserted on behalf of the respondent UOI that that pursuant to the Supreme Court orders dated 10.01.2022, in various miscellaneous applications and a *suo motu* writ petition related to the COVID-19 pandemic, a relaxation period from 15.03.2020 to 28.02.2022, was granted. Excluding this period, the complaint was found to be within the limitation period, leading the Learned Chief Judicial Magistrate, Mohali, to take cognizance of the matter.

10. Heard learned counsel for the parties.

<u>Analysis</u>

11. The issue that arises in the present case is whether Criminal Complaint No. 4 of 2022 falls under the category specified in Section 468(2)(c) of the Cr.P.C, 1973, and consequently, whether the learned Trial Court was prohibited from taking cognizance of the complaint. Additionally, it needs to be determined whether any order passed in relation to this complaint was made without jurisdiction.

12. To examine as to whether the complaint has been filed within the period of limitation, Section 468(2)(c) 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.*

13. Before proceeding further it would be apposite to have a glance of the relevant section which talks about the question of limitation, the quantum of punishment which has to be borne in mind, which is prescribed to be two years for an offence if committed under Section 27(d) of the Act of 1940, 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*
>
> *(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."*

14. Section 468 of the Cr.P.C., 1973 imposes a bar on the Court from taking cognizance of an offence once the limitation period has expired, as specified under Section 468(2). Now, as per Section 468(2) Cr.P.C., 1973 the period of limitation for any offence which is punishable with an imprisonment term exceeding one year, but not exceeding three years, is three years. Therefore, if a complaint is filed after three years of the alleged

offences as per section 468(2)(c) Cr.P.C., 1973 taking place, then a Court will be barred from taking cognizance of the same and any Order that is rendered pursuant to this will be without jurisdiction.

15. 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 for limitation 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).*
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> *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.*
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> *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].*

Conclusion

16. Adverting to the merits of the case in hand, a sample of the drug Fungal Diastase with Pepsin Syrup (ENZYAL), Batch No. DEL-3864, manufactured in September 2016 and with an expiry date of August 2017 (200 ml), was collected by the Drug Inspector on 27.09.2016. The sample was subsequently sent for analysis in accordance with Section 23 of the 1940 Act. The analysis report, dated 13.02.2017, was received from the

laboratory in Sector 39, Chandigarh, declaring the drug sample to be of "NON STANDARD QUALITY" (Annexure P-3). In response to this report, the petitioner, aggrieved by the findings, requested a retest by the Central Drug Laboratory in Kolkata, as permitted under Section 25(3) of the 1940 Act. Following this request, a fresh report was issued on 12.09.2017 by the Director of the Central Drug Laboratory in Kolkata, which again declared the sample to be of "NON STANDARD QUALITY."Admittedly after receiving the government analyst report on 13.02.2017, the complaint was filed after a lapse of 4 years, on 14.01.2022.

17. In the present case, the limitation period would be three years, as the complaint was filed under Section 18(a)(i), 18(a)(vi), 18(c) read with Section 16 and 27(d) of the 1940 Act. These provisions impose penalties for the manufacture, sale, etc., in contravention of Chapter IV of the Act, and provide for imprisonment for a term not less than one year, which may extend to two years. Therefore, this punishment squarely falls within the bracket of one to two years as has been envisaged under section 468(2)(c) of the Cr.P.C., 1973.

18. As far as contention of the respondent regarding the relaxation of limitation period during COVID is concerned the same also does not hold good as the Apex court has granted relaxation for the period ranging from 15.03.2020 to 28.02.2022, however the government analyst report was received way back on 13.02.217.(1st report) and after retesting also 2nd report was received on 12.09.2017.

19. Considering the law of limitation and the material presented before this Court, it is the Court's view that the complaint should have been

filed within three years from the date the report was received by the Drug Inspector, i.e.13.02.2017(1st report). Therefore, the complaint should have been filed on or before 12.02.2020. Since the limitation period had already expired, and Criminal Complaint No. 04 of 2022 was filed after 4 years of receiving of the complaint i.e on 14.01.2022, the learned Trial Court could not have taken cognizance of the complaint. And moreover the court below has committed grave error by summoning the petitioner as delay was also not condoned by the trial court below while admitting the complaint.

Decision

20. For the aforesaid reasons, this petition is allowed and Criminal Complaint No. COMA-4-2022 (Annexure P-1) and all consequential proceedings arising therefrom including summoning order dated 02.02.2022 as well as order dated 23.11.2022 (Annexure P-8) vide which application for amendment of the complaint has been allowed and Amended complainant dated 19.09.2022 (Annexure P-9) and order dated 07.08.2023 where by Notice of Acquisition has been issued/ Charges have been farmed against the petitioner (Annexure P-10) and all subsequent proceedings arising therefrom are quashed qua the petitioner.

(SANDEEP MOUDGIL)
08.11.2024 **JUDGE**
Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*