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Crl.O.P.No.9893 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2026

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9893 of 2022

and

Crl.M.P.Nos.5808 & 5809 of 2022

1.M/s.Centurion Laboratories,
(Division of Centurion Remedies Pvt Ltd.)
rep. by its Managing Director,
Ambalal Vanarsidas Patel

2.Ambalal Vanarasidas Patel
Managing Director of
M/s.Centurion Laboratories.

.... Petitioners

Vs

State of Tamil Nadu,
Represented by P.Vijyabhanu,
Drugs Inspector,
Egmore Range (i/c)
O/o.The Asst.Director of Drugs Control
Zone-I, DMS Campus,
259-261, Anna Salai, Chennai – 600 006.

.... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.7435 of 2016 pending on the file of the X Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.T.D.Selvan Babu

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.7435 of 2016 on the file of the X Metropolitan Magistrate, Egmore, Chennai.

2. The respondent filed a complaint under Section 18(a)(i) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the “Act”) punishable under Section 27(d) of the Act, alleging that on 29.09.2015, the respondent had drawn a sample of Carbimazole Tablets IP 5 mg (hereinafter referred to as “the drug”) under Form 17 and subjected the same for analysis. The sample was reported to be not of standard quality as per the report dated 16.06.2016, on ground that the sample did not conform to the IP specification for the content of Carbimazole (57.4%). Therefore, it attracts the contravention of Section 18(a) (i) of the Act. After complying with the provisions under Section 25(2) of the Act, it was found that the drug had been distributed by M/s.Centurion Laboratories under invoice dated 14.12.2014. A show cause notice dated 06.07.2016 was issued to the petitioners along with the second copy of the analytical report. On receipt of the same, the petitioners submitted their explanation dated 25.07.2016. However, the explanation offered by the petitioners was not found satisfactory. Hence, it was alleged that the petitioners



had contravened the provisions of Section 18(a)(i) of the Act, as the drug manufactured and sold was not of standard quality, and thereby they are liable to be punished under Section 27(d) of the Act.

3. The learned counsel appearing for the petitioners submitted that the respondent had drawn a sample of the drug on 29.09.2015 and on the same day, it was sent to the Government Analyst, Drugs Testing Laboratory, Chennai for analysis. By report dated 16.06.2016, the sample was stated to be not of standard quality on the ground that it did not conform to the IP specification for the content of Carbimazole, which was found to be 57.4%. Though the complaint was filed in the year 2016 that too after the expiry of the shelf-life of the drug in question, and the petitioners were served with summons only after nearly five years from the date of the complaint. It is further submitted that the drug has to be stored and protected from light and moisture and should be kept below 30° C as per IP standards. However, the said storage condition was not followed by the respondent while dealing with the sample for analysis, thereby violating the IP methods and procedures. The petitioners were served with a show cause notice dated 16.06.2016, to which they submitted their reply on 25.07.2016, stating that they did not agree with the Analyst's report on several grounds. It is their specific contention that the drug was subjected to analysis after its expiry and that the shelf-life of the drug expired on 30.11.2016,



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whereas, the complaint was filed only on 09.12.2016. Though the petitioners submitted their explanation before the expiry of the shelf-life of the drug and had requested for re-analysis of the sample, the respondent failed to take steps to send the sample for re-analysis as contemplated under the Act. Therefore, the petitioners lost their right to get the second analysis for the drug. Therefore, the entire prosecution against the petitioners cannot be sustained and is liable to be quashed.

4. The respondent filed a counter and the learned Government Advocate (Crl.Side) appearing for the respondent submits that, after the samples were taken from the medical shop, they were stored under proper storage conditions. The Government Analyst carried out the analysis of the IP method only and it does not conform to the IP specification for the content of Carbimazole. Thereafter, the petitioners were served with a show cause notice. However, the petitioners failed to challenge the Analyst's report in the manner known to law. Therefore, they cannot avail themselves of the benefit of the proviso under Section 25(4) of the Act. It is further submitted that the drug was analyzed by the Government Analyst on 16.06.2016 i.e., before the expiry of the shelf-life of the drug. Therefore, there is absolutely no grounds to quash the entire proceedings initiated by the respondent for the alleged contravention of Section 18(a)(i) of the Act.



5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. On the basis of the submissions made by the learned counsel appearing on either side, the following point arises for consideration :-

“Whether the complaint was lodged before the expiry of the shelf-life of the drug and if not whether the continuation of the prosecution is sustainable ?”

7. The respondent had taken sample of the drug on 29.09.2015. Though the sample was sent to the Government Analyst, the Government had sent a report only on 16.06.2016. However, the complaint was filed only on 09.12.2016. The shelf-life of the drug expired on 30.11.2016. Therefore, the petitioners were deprived of their valuable right to controvert the test report under Section 25(3) of the Act. In this regard, the learned counsel for the petitioners relied upon the Judgment of this Court reported in **CDJ 2020 MHC 3902** in the case of **Zee Laboratories Ltd., Rep by its Managing Director, Rajeev Mukul and other Vs. Tamil Nadu State, rep by the Drugs Inspector, Tirunelveli-II Range, Tirunelveli**, wherein it was held as follows :

12.The impugned complaint lodged on 11.11.2014 just few days prior to the expiry of self life of the drugs in question namely expires in November 2014. It revealed that the petitioners have been deprived of their valuable right to



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controvert the rest report under Section 25(3) and 25(4) of the Drugs and Cosmetics Act. In this regard, the learned counsel for the petitioners relied upon the decision of the judgment in Medicamen Bio Tech Limited and another Vs. Rubina Bose, Drug Inspector Case (cited supra), in which, the Hon'ble Supreme Court of India has held as follows :-

“16. It is, therefore, evident that the appellant had not once but on at least two occasions and within 28 days of the receipt of the show cause notice clarified that it intended to adduce evidence to show that the test report of the Government Analyst was not correct. The judgments cited by the learned counsel for the respondent, therefore, do not apply to the facts of the case as they were given in the context where the dealer/manufacturer had not expressed its desire to challenge the veracity of the report of the Drugs Analyst.

18. In Unique Farmaid Case which was a case under the Insecticides Act which has provisions analogous to Section 25(34) of the Act, the Court found that the accused had indeed made a request to the Inspector for sending the sample for retesting within the prescribed time limit and as this request had not been accepted an important right given to an accused had been rendered ineffective on which the proceedings could be quashed. This is what the Court had to say :

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under Sub-Section (4) of Section 24 of the Act. Under Sub-Section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticides Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the court of such and intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been



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conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence.

13. In these circumstances, the High Court was right in concluding that it will be an abuse of process of Court if the prosecution is continued against the respondent, the accused persons. The High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals.'

We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for reanalysis. The observations in Amery Pharmaceuticals case are also to the same effect. We find that the aforesaid interpretation supports have the fourth sample tested from the Central Drugs Laboratory. It is also short of the expiry date of the drug and as such had the appellant-accused appeared before the Magistrate even on 02.07.2002 it would have been well-high impossible to get the sample tested before its expiry."

8. In the case on hand, the petitioners were not given an opportunity to controvert the test report by the Government Analyst. Therefore, the above judgment is squarely applicable to the case on hand. He is also relied upon the Judgment reported in **2015(4) MLJ (CrI) 56** in the case of ***Embiotic Laboratories (P) Ltd., rep by its Director, Thiru Harish K.Jain and another Vs. State of Tamil Nadu, rep by Drugs Inspector, George Town II Range, Teynampet, Chennai – 600 006***, wherein this Court held as follows :-



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“8.Though in the instant case, some explanation is sought to be made in the counter filed by the respondent for not filing the complaint within reasonable time, the same is not sufficient and satisfactory enough to explain the delay either in filing the complaint or in issuing summons to the petitioner, which has as in the case decided by the Apex Court, deprived the petitioners herein of the valuable right available to them under Sections 25(3) and 25(4) of the Act. That being the factual and legal position, this Court by applying the observation of the Hon’ble Supreme Court, is of the view that the proceedings initiated against the petitioners is contrary to relevant provisions of the Act and against the principles of natural justice and in the event of such prosecution being allowed to go on, it would amount to abuse of process of law and serious prejudice would be caused to the petitioners. As such, the proceedings initiated against the petitioners is liable to be quashed.”

9. On the sole ground, the impugned complaint is nothing but clear abuse of process of law and the complaint lodge by the respondent cannot be sustained as against the petitioners herein and the same is liable to be quashed.

10.Accordingly, the proceedings in C.C.No.7435 of 2016 on the file of the X Metropolitan Magistrate, Egmore, Chennai, are hereby quashed and the



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Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No

To

1. The X Metropolitan Magistrate,
Egmore, Chennai

2. The Drugs Inspector,
Egmore Range (i/c)
O/o. The Asst. Director of Drugs Control
Zone-I, DMS Campus,
259-261, Anna Salai, Chennai – 600 006.

3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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