IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-59044-2023 (O&M)
Date of decision: 27.01.2026

Vineet Jindal

....Petitioner

Versus

State through Drug Inspector, Amritsar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Shubham Jain, Mr. Rishabh Jain, Advocates,
for the petitioner.

Ms. Gagandeep Kaur, DAG, Punjab

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AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing of complaint No.06 dated 06.01.2017 under Section 18(a)(vi) punishable under Section 27(c) of Drugs & Cosmetics Act, 1940 as well as summoning order dated 06.01.2017, Annexure P-7, and consequential proceedings arising therefrom.

2. Learned counsel submits that the petitioner is a Distributor of the drugs allegedly found to be misbranded, whereas the complaint and summoning order stand quashed qua the manufacturers and marketing company by this Court vide judgment dated 10.10.2023, in CRM-M-35197-2017, titled as **M/s G.S. Pharmaceuticals Pvt. Ltd. And another vs. State through Drug Inspector, Amritsar**, Annexure P-8, on account of the fact that they had failed to apply for re-analysis of the drug samples within a period of 28 days, which thus covers the case in his favour on all fours, relevant paras whereof read thus:-

> "7.2 Learned State counsel has further argued that the alleged letter dated 12.04.2014 (Annexure P-4) had never been received by the Drugs Inspector and was just an afterthought by the petitioners to wriggle out of their liability, as they had failed

to apply for re-analysis of the drug samples within a period of 28 days; hence, the report of the Government Analyst would in the above circumstances be deemed to be final and the petitioners could thus, be prosecuted on the basis of the report of the Government Analyst."

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"11. Thus, as per the mandate of Section 23(iii) of the Act, one portion of the sample drawn has to be sent to the person whose particulars have been disclosed under Section 18A of the Act, which in the instant case would be the petitioners. This has to be appreciated in the light of the provisions of S.25 which provides that any document claiming to be a report signed by a Government Analyst is to be considered as evidence of the facts mentioned in it. The report of the Government Analyst is generally considered conclusive unless the person from whom the sample was taken or the person whose information is disclosed under Section 18(a) of the Act takes specific action to controvert it and notifies his intention to controvert it, in writing, either to the Inspector or the Court where proceedings related

to the sample are pending, within 28 days of receipt of the copy of the

report. It is only when such notice as provided under Section 25(3) of

the Act is given and the sample has not already been tested or analyzed in the Central Drugs Laboratory, the Court has the authority to either, on its own initiative or at the request of the complainant or the accused, send the sample to the Central Drugs Laboratory for retesting or reanalysis. In this background, the right of the petitioners to obtain a part of the sample and request for a re-analysis becomes critically significant. In absence thereof, the petitioners would be left with no means to challenge the report of the Government Analyst.

12. Adverting to the facts of the case in hand, the respondent in para 7 of its reply dated 16.08.2019 has admitted that a sealed sample portion was not given to the manufacturing company and only the Test Report was sent to it. Thus, admittedly there has been a clear violation of the provisions of Section 23 of the Act. The argument of the learned State counsel that sending the sample to M/s Virdi Pharmaceuticals (supplier of the drugs) would be deemed compliance of the provisions of Section 23 of the Act, is unacceptable. Evidently, since the petitioners were deprived of their right to challenge the report of the Government Analyst, it can be safely concluded that it was an affront to the right of the petitioners to a fair trial.

13. Furthermore, the Manufacturing Company upon receipt of the Test Report on 26.03.2014, sent a letter dated 12.04.2014

(Annexure P-4) within the window period of 28 days to the Drug Inspector, notifying their intent to dispute the report of the Government Analyst, and with a further request for providing it a sealed sample for re-analysis before the Central Drugs Laboratory. Attention of this Court was drawn to postal receipt dated 16.04.2014 (Annexure P-4) which confirmed proper addressing and postage. The postal receipt thus, creates a presumption of delivery of the letter dated 12.04.2014, and the respondent cannot avoid responsibility by simply denying receipt of the registered letter.

14. Despite delivery of the letter to the respondent by the petitioners, no action was taken, and the petitioners were not provided with the sealed sample. Ultimately, the sample expired in December, 2015, due to the fault of the respondent. Consequently, the petitioners were deprived of the opportunity to contest the report of the Government Analyst.

15. The petitioners cannot be subjected to criminal prosecution in light of the denial of their statutory rights to have their sample analyzed by the Central Drugs Laboratory, especially when they are not at fault.

16. At this stage, it would be relevant to refer to the ratio of law laid down by Hon'ble the Supreme Court in Laborate Pharmaceuticals India Ltd (supra), wherein while dealing with similar facts, it has been held as under:-

> "9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be lame prosecution."

17. As a sequel to the above, the instant petitions are allowed and Complaint No.06 dated 06.01.2017 titled as 'State through Drugs Inspector, Amritsar Vs. Balwinder Singh and others' and under Sections 18(a)(vi) punishable under Section 27(c) of the Act and all subsequent proceedings arising therefrom including summoning order dated 06.01.2017 are quashed qua the petitioners."

3. Notably, the complaint and summoning order already stands quashed

in case of the manufacturers and marketing company, while the petitioner is the Distributor, a fact which remained unrebutted at the hands of the learned State counsel, who despite best efforts, was unable to draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

4. Consequently, the present petition is hereby allowed and complaint No. 06 dated 06.01.2017 under Section 18(a)(vi) punishable under Section 27(c) of Drugs & Cosmetics Act, 1940 as well as summoning order dated 06.01.2017, Annexure P-7 are hereby quashed, qua the petitioner.

(AMAN CHAUDHARY)
JUDGE

27.01.2026
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Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No