

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 07.10.2023

Pronounced on: 18.12.2023

CRMC No. 258/2016

Kumar Wanchoo, Age 64 Years, Managing Director
M/s Eaton Laboratories, 40 Industrial Estate, Zainakote
Srinagar -190012

.....Petitioner

Through: Mr. J.H.Reshi, Advocate

Vs.

1. Drug Inspector Manufacturing, Kashmir
Division, Srinagar
2. Drug Inspector, Bijbehara, Anantnag
Kashmir

.....Respondent (s)

Through: Mr Satinder Singh Kala, AAG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

1. M/s Eaton Laboratories, Petitioner, through its Managing Director has invoked the jurisdiction of this Court under section 561-A of Cr.P.C (Now Section 482 of Cr.P.C) for quashing of Criminal Proceedings initiated against the said company under Section 18 (a) (i) read with Section 27 (d) of the Drugs and Cosmetics Act, 1940 pending in the Court of Chief Judicial Magistrate, Anantnag and Fourth Additional District Judge, Srinagar, respectively with alternate prayer to club the two complaints for composite trial.

First Complaint

2. On 22.03.2013, The Drug Inspector Bijbehara, Anantnag under the authority conferred on him by Section 22 of Drugs and Cosmetic Act 1940 lifted a sample of drug, namely Emlo-A, Batch No. 9159, Manufacturing Date January 2013, Expiry Date December 2015, manufactured by M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar-190012 from the pharmacy shop namely M/s Zargar Medical Agency Bijbehara. The sample of the drug *supra* was lifted as per the procedure laid down under Section 23 (3) (a) of Drugs and Cosmetic Act, 1940. One portion of drug sample so lifted was sent to Government Analyst, Drug Testing Laboratory Dalgate, Srinagar, for analysis vide Memorandum No. 18 bearing Reference No. DFCO-DI-Bij-S26, dated 22.03.2013. The government analyst declared the drug sample to be “*Not of Standard Quality*” on the ground that the sample fails in the assay as *the contents of Amlodipine Besylate* in the sample were found less than the 70.9 per cent of the claim made. Further in compliance with Section 25 (2) of Drugs and Cosmetic Act 1940, a copy of test report was provided to M/s Zargar Medical Agency Bijbehara on 01.06.2013. Moreover, the available stock of one thousand tablets of the drug in question found lying with pharmacy shop, namely M/s Zargar Medical Agency Bijbehara was seized on 31.05.2013 by the Drug Inspector. Thereupon, Drug Inspector obtained custody permission of the drugs *supra* from the Court of Chief Judicial Magistrate, Anantnag on 04.06.2013 in compliance to Section 23 (5) (b) of Drugs and Cosmetics Act, 1940.
3. The firm (Pharmacy shop), M/s Zargar Medical Agency Bijbehara vide its letter dated 01.06.2013 intimated the Drug Inspector that the drug sample in question was purchased by them from the Petitioner i.e. by M/s Eaton

Laboratories 40 Industrial Estate, Zainakote, Srinagar vide invoice no. 971 dated 19.03.2013. On receipt of the said reply, the Drug Inspector took up the matter with the Petitioner. Furthermore, in compliance to Section 25 (2) of Drugs and Cosmetics Act, 1940 and Rules made thereunder, a copy of test report along with the portion of drug sample was sent to the Petitioner i.e. M/s Eaton Laboratories by the Drug Inspector on 06.06.2013. The reply of the Petitioner was not found satisfactory. Accordingly, a complete investigation report was placed before the screening committee for accord of prosecution permission from the Controlling authority. The prosecution permission was granted by the Controlling authority i.e. Drug and Food Control Organization, J&K (Jammu) through Deputy Controller Drug and Food Control Organization Kashmir Division, Srinagar vide endorsement no. DFO/K/Drug/2063-65 dated 19.08.2013.

4. On receipt of permission from the controlling authority, the Drug Inspector filed a complaint against the Petitioner i.e. M/s Eaton Laboratories as well as M/s Zargar Medical Agency, Bijbehara under Section 18 (a) (i) read with Section 27 (d) of the Drugs and Cosmetics Act, 1940 and the Rules thereunder. It is pertinent to mention herein that the complaint was filed before the Court of Chief Judicial Magistrate, Anantnag.

Second Complaint:

5. Exactly eight days later i.e. 30th March 2013, the Drug Inspector for Manufacturing, Kashmir Division lifted the drug sample (same drug sample as in the first complaint) namely Emlo-A, Batch No. 9159 with manufacturing date as January 2013, with expiry date as December 2015 from the premises of the Petitioner i.e. M/s Eaton Laboratories. The sample which was lifted by the Drug Inspector was sent to Drug Laboratory

Dalgate, Srinagar for analysis vide Memorandum No. DFO/K/DI/Mfg/43 dated 15.04.2013. The Drug analyst vide his test report dated 30.05.2013 has declared the aforementioned drug sample to be “*not of standard quality*” as “*the contents of Amlodipine Besylate*” in the sample were found less than the claim made. Further, in compliance to Section 25 (2) of Drugs and Cosmetics Act, 1940 and Rules made thereunder, a copy of test report was provided to the Petitioner i.e. M/s Eaton Laboratories on 31.05.2013. Furthermore the Drug Inspector, on receipt of the test report, seized the remaining stock of the drug sample i.e. Emlo-A B.No 9159. Also the custody was obtained from the designated court for retaining the aforementioned drugs under safe custody. The complete investigation report was placed before the screening committee by the complainant (Drug Inspector) for accord of permission to prosecute the Petitioner. The permission for prosecution was granted by the controlling authority.

6. Accordingly, Drug Inspector Manufacturing, Kashmir Division filed a complaint against the Petitioner i.e. M/s Eaton Laboratories before Court of Chief Judicial Magistrate, Srinagar under Section 32 read with Section 27 (d) of Drugs and Cosmetics Act, 1940.

Conviction in the first complaint:

7. The first complaint *supra* was filed under Section 18 (a) (i) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 which was pending disposal before the Court of Chief Judicial Magistrate, Anantnag. The Petitioner i.e. M/s Eaton Laboratories, Zainakote, Srinagar and M/S Zargar Medical Agency through proprietor have made a confessional statement before the Court of Chief Judicial Magistrate, Anantnag, wherein they have confessed to a fact that the drug, as mentioned in the complaint, was “*not of*

standard quality". The Court of Chief Judicial Magistrate, Anantnag in view of the confession made by the accused i.e. Petitioner, held them guilty for the commission of offences under Section 18 (a) (i) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 and convicted both which includes the petitioner/accused.

8. However, the accused i.e. Petitioner was sentenced to pay fine only, to the tune of Rupees Twenty Thousand with a warning for future conduct. It is pertinent to mention herein that there were two accused in the first complaint, as such the fine of Rupees Twenty Thousand each that is total of Rupees Forty Thousand Rupees was imposed. The Court directed that the said fine of Rupees Forty Thousand has been deposited vide GR No. 2377111 dated 11.11.2020 and same be remitted to Government treasury under rules. In view of the payment of fine, the complaint was disposed off and the file was directed to be consigned to record after due compilation. For facility of reference the operative portion of the order dated 11.11.2020 is reproduced hereinunder:

".....Heard the submission and perusal the material place on record and, I have also gone through the confession statement of the accused and relevant panelizing provision under Drugs and Cosmetics Act, 1940. It is admitted fact that the accused persons are facing the trial of present complaint since 26-09-2013 and till date the matter has not reached to the final stage.

Therefore in totality of the circumstances as discussed here in above in view of the confession the accused are held guilty for the commission of offences U/S 18 (a) (i) read with section 27

(d) of Drugs and Cosmetics Act, 1940 and in view of the old pendency of present complaint the accused are sentenced to fine only and are sentenced to pay fine to the tune of Rs. 20,000/- each with a warning for future conduct. The fine of Rs. 20,000/- each i.e. total 40,000/- is deposited vide G. R No. 2377111 dated 11-11-2020 same be remitted to Government Treasury under Rules. In view of the payment of fine. The bail bond and personal surety bonds of accused are released. The seized drug be destroyed after the period of appeal is over. The present complaint is accordingly disposed off, file be consigned to records after due compilation.....”.

Issues to be considered:

9. That, on perusal of the pleadings and after hearing the arguments made by the respective counsels, the short question which is to be answered in this petition is:
 - i. ***Whether the continuation of proceedings in the second complaint before the Court of Fourth Additional Sessions Judge, Srinagar with respect to the drug sample which was analysed to be “not of standard quality” would amount to the petitioner being tried twice for the same offence on the same facts. In short, whether the continuation of proceedings in second complaint would amount to double jeopardy?***

Commonality of facts in two complaints;

10. It is an admitted factual position, that in both the complaints, a drug namely Emlo-A manufactured by the Petitioner i.e. M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar has been declared to be “not of standard quality”. The drug Emlo-A the sample of which

was collected by the Drug Inspector at Anantnag and in Srinagar have the same Batch No. i.e. 9159, same manufacturing dated i.e. January 2013 and same expiry date i.e. December 2015. This is the commonality of facts in both the complaints.

Distinguishing feature in both complaints:

11. The only distinguishing feature in both the complaints is that in a complaint filed before the Hon'ble court of Chief Judicial Magistrate Anantnag, the sample of the drug Emlo-A was lifted on 22.03.2013 and in the second complaint which is pending adjudication before the Court of Fourth Additional Sessions Judge Srinagar, the sample of the drug Emlo-A was lifted on 30th March 2013. As such, the distinguishing feature is that samples were lifted on two separate dates.

Legal Analysis:

12. The Petitioner i.e. M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar is a “*manufacturer of drugs*”. Both the complaints have been filed against the petitioner under section 18 (a) (i) read with Section 27 (d). Section 18 (a)(i) says no person shall himself or any other person on this behalf ‘*manufacture for sale*’ or ‘*for distribution*’ or ‘*sell*’ or ‘*stock*’ or ‘*exhibit*’ or ‘*offer for sale*’, or ‘*distribute*’ any drug which is not of a standard quality, or is misbranded, adulterated or spurious. Since the petitioner manufactures drugs for sale and the drug analyst vide test report has declared the drug sample to be “*not of standard quality*”. As such section 18 (a) (i) has to be read in the facts of the present case as “*no person shall himself or by any other person on this behalf manufacture for sale any drug which is not of a standard quality.*”

13. Section 27 (d) of Drugs and Cosmetics Act, 1940 provides penalty for manufacture of any drug in contravention of Section 18 (a) (i) and the maximum punishment to be awarded is 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. For the facility of reference section 18 (a) (i) and section 27 (d) is reproduced hereunder:

“Section 18. Prohibition of manufacture and sale of certain drugs and cosmetics. *From such date as may be fixed by the State Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on this behalf*

(a) Manufacture for sale (or for distribution), or sell, or stock or exhibit (or offer) for sale, or distribute----

*(i) Any drug which is not of a standard quality, or is misbranded adulterated or spurious;
.....*

“Section 27. Penalty for manufacture, sale, etc., of drugs in contravention of this chapter - *Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibit or offers for sale or distributes.-----*

(a)

(b)

(c)

(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 terms 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 18 (a) (i) read with section 27 (d) postulate only four **separate** categories of cases and no other:

- i. Manufacture for sale*
- ii. Manufacture for distribution*
- iii. Actual sale*
- iv. Stocking or exhibition for sale or distribution of any drugs.*

15. The Petitioner's case falls within the category of "*manufacture for sale.*"

The Petitioner's case does not fall under the category of "*actual sale.*" It is pertinent to mention herein that in the first complaint which has been disposed off by the Court of Chief Judicial Magistrate Anantnag, the complaint was filed against both i.e. "*manufacturer for sale*" of lifted sample drug and also against the medical agency who was responsible for "*actual sale*" of the drug i.e. complaint was filed against M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar for *manufacturing for sale* of the drug namely Emlo-A and the complaint was filed against M/s Zargar Medical Agency, Bijbehara from whose medical shop the drug namely Emlo-A was lifted for *actual sale* of the drug. However, in the second complaint, which is pending adjudication before the Court of Fourth Additional Sessions Judge Srinagar, the complaint has been filed only against the petitioner i.e. M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar only for '*manufacturing for sale*' of the drug, Emlo-A. Since the drug was lifted by the Drug Inspector for Manufacturing,

Kashmir Division from the premises of the Petitioner who is the manufacturer of the drug, as such there was no actual seller of the drug in the second complaint.

16. Now, it is an admitted position that in both the cases, a complaint has been filed against the Petitioner under section 18 (a) (i) read with section 27 (d) for *manufacturing for sale* of the lifted drug and not the *actual sale* of the drug. The Petitioner i.e. M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar manufactures drug for sale, but does not actually sell the drugs. Since, Section 18 (a) (i) read with section 27 (d) postulates only four **separate** categories of cases *supra*. As such, the Petitioner has already been convicted for committing an offence under Section 18 (a) (i) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 for *manufacturing for sale* of a drug namely Emlo-A with batch no. 9159 having manufacturing date of January 2014, expiry date of December 2015. As such, continuation of subsequent complaint for the same offence on the same set of facts will amount to petitioner being prosecuted and punished for the same offence more than once
17. In the instant case, the samples in the two complaints have been lifted from two different places, the *actual seller* of the drug i.e M/s Zargar Medical Agency, Bijbehara Anantnag and *manufacturer for sale* of drug i.e. M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar on two different occasions i.e. 22.03.2013 and 30th March 2013. Both the samples of drugs came to be tested by the Government Analyst in the same Government Laboratory on the same date 30.05.2013. In both the complaints the only allegation against the petitioner is that it manufactures for sale a drug namely Emlo-A which was found to be “not of standard

quality”, which for all purposes will constitute a single occurrence because test of law will be “**Manufacture for Sale**” not the “**Actual Sale**” as per Section 18 (a) (i) read with section 27 (d) of Drugs and Cosmetics Act, 1940. It is pertinent to mention herein that *actual sale* was done by M/s Zargar Medical Agency, Bijbehara, Anantnag who has been punished for the *actual sale* of the drug by the Hon’ble Court of Chief Judicial Magistrate, Anantnag.

18. So far as the question of benefit of Section 300 of CrPC or Article 20 (2) of the Constitution of India to the Petitioner is concerned, it is necessary for the accused person to establish that he has been tried by the Court having competent jurisdiction for the offence and then, for the same offence and on the same facts, he has been tried again by the Court of competent jurisdiction. For facility of reference section 300 of CrPC and Article 20 (2) of the Constitution of India is reproduced hereunder:

“Section 300: Code Of Criminal Procedure, 1973

Person once convicted or acquitted not to be tried for same offence.

1. *A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.*
2. *A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct*

offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

3. *A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.*
4. *A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.*
5. *A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.*
6. *Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 , (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.*

Article 20 (2) of Constitution of India

(1)

(2) *No person shall be prosecuted and punished for the same offence more than once.*

(3) *No person accused of any offence shall be compelled to be a witness against himself.*

19. The common principle of law laid down in Section 300 of Cr. P.C read with Article 20 (2) of the Constitution of India is that person once convicted or acquitted for commission of offence cannot be tried subsequently for the same offence. In other words, no person shall be prosecuted and punished for same offence more than once. Coming to the facts of the present case, the first complaint which was filed before the Court of Chief Judicial Magistrate, Srinagar by the Drug Inspector, Bijbehara under Section 18 (a) (i) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 was filed against *manufacturer for sale* of the drug i.e. petitioner company and against the company, namely, M/s Zargar Medical Agency Bijbehara responsible for *actual sale* of the drug.

20. In the second complaint, there is only the manufacturer for sale of the drug but the second step i.e actual sale of the drug has not taken place. So, in other words *first complaint* has been filed for commission of *two offences, viz:*

- i. Manufacture for sale of a drug
- ii. Actual sale of the drug

And in that complaint, the Petitioner is accused of only one offence i.e. manufacture for sale of drug. The *second complaint* has been filed under Section 18 (a) (i) read with Section 27 (d) only for *one offence* i.e. “*Manufacture for sale*” of drug because there is no *actual sale* of drug in the second complaint.

21. In both the complaints, only allegation against the Petitioner i.e M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar is for commission of offence i.e. “*Manufacture for sale*” of a drug. The drug i.e. Emlo-A of which the Petitioner is accused for manufacturing (not of standard quality) is **common in both the complaints** i.e. its **commonality can be deciphered from a fact that both the samples have a common batch no. i.e. 9159**, a common manufacturing date i.e. January 2013, a common expiry date i.e. December 2015.
22. In essence, M/s Eaton Laboratories 40 Industrial Estate, Zainakote, Srinagar-190012 has been convicted for an offence i.e. manufacture for sale of drug Emlo-A, having batch no. 9159, manufacturing date January 2013, expiry date December 2015 by the Court of Chief Judicial Magistrate, Anantnag. As such, the Petitioner i.e. M/s Eaton Laboratories cannot be tried for commission of offence i.e. manufacture for sale of the drug having same specific manufacturing details, subsequently.
23. This Court is of the view that if the prosecution in the second complaint against the Petitioner continues, then it will amount to allowing the Petitioner who has once been convicted, to be tried for the same offence again or in other words, that will be allowing the petitioner to be prosecuted and punished for the same offence more than once.
24. It is well settled law that no person shall be brought to trial for the same offence, and the same subject matter twice.
25. This Court is fortified by the view of the Hon’ble Supreme Court in **T.P.Gopalakrishnan vs. State of Kerala (2022) 14 SCC 323**. The relevant paras are reproduced as under:

“20. The word ‘jeopardy’ is used to designate the danger of conviction and punishment which an accused in a criminal action incurs. ‘Jeopardy’ implies an exposure to a lawful conviction for an offence for which a person has already been acquitted or convicted. The terms ‘double jeopardy’, ‘former jeopardy’, ‘jeopardy for life or limb’, ‘jeopardy for the same offence’, ‘twice put in jeopardy of punishment’ and other similar expressions used in various Constitutions and statutes are to be construed substantially, to the same effect. In other words, double jeopardy is used to denote the protection to an accused, that he has had a fair trial for the same offence, wherein fair trial means trial according to law and established legal procedure.

24. Section 300 of the CrPC embodies the general rule which affirms the validity of the pleas of autrefois acquit (previously acquitted) and autrefois convict (previously convicted). Sub-section (1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.

27. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide [Thakur Ram vs. State of Bihar](#)

32. The concept of double jeopardy can also be understood in terms of Article 21 of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to procedure established by law. ‘Life’ under Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider connotation; it includes the right to live with human dignity. In the celebrated judgment in the case of [Maneka Gandhi vs. Union of India](#) 1978 AIR 597, this Court gave a new dimension to Article 21, wherein it stated that the right to live includes within its

ambit the right to live with dignity. Under the umbrella of Article 21, various rights like right to free legal aid, right to speedy trial, right to fair trial, etc. have been included. Similarly, protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity.

CONCLUSION

26. Keeping in view the above discussion and settled position of law, I hold that continuation of proceedings in the second complaint would amount to **double jeopardy**, as such, this petition is allowed. Resultantly, the proceedings pending before the Court of 4th Additional District & Sessions Judge Srinagar against the petitioner initiated under the provisions of Drugs and Cosmetics Act, 1940 *supra* are quashed, in entirety.
27. Disposed of accordingly.

(Wasim Sadiq Nargal)
Judge

Jammu
18.12.23
Gh. Nabi/Secy.

Whether the judgment is speaking : Yes/No

Whether the judgment is reportable : Yes/No