



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF SEPTEMBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CRIMINAL PETITION NO. 6919 OF 2022**

**BETWEEN:**

1. M/S EMCURE PHARMACEUTICALS LTD  
LANE NO.3  
PHASE-II SIDCO  
BARI BRAHMANA  
JAMMU -181133
2. SRI SATISH RAMANLAL MEHTA  
MANAGING DIRECTOR OF  
M/S EMCURE PHARMACEUTICALS LTD  
LANE NO.3  
PHASE-II SIDCO  
BARI BRAHMANA  
JAMMU -181133
3. SRI MAHESH NATHALAL SHAH  
DIRECTOR (TECHNICAL) OF  
M/S EMCURE PHARMACEUTICALS LTD LANE 3  
PHASE-II SIDCO  
BARI BRAHMANA JAMMU-181133

Digitally signed by  
PADMAVATHI B K  
Location: HIGH  
COURT OF  
KARNATAKA

...PETITIONERS

(BY SRI. PRAMOD NAIR, SENIOR ADVOCATE A/W  
SRI ANAND MUTTALLI &  
SRI GAURAV GANAPATHY C.G., ADVOCATES)



**AND:**

STATE OF KARNATAKA  
AT THE INSTANCE OF  
DRUGS INSPECTOR-1  
BENGALURU CIRCLE -3  
BENGALURU  
REP BY SPECIAL PUBLIC PROSECUTOR

...RESPONDENT

(BY SMT.K.P. YASHODHA, HCGP)

THIS CRL.P. IS FILED U/S.482 OF THE CR.P.C. PRAYING TO A. QUASH THE ORDER DATED 20.03.2018 PASSED IN CRL.MISC.NO.1/2018 BY THE LEARNED SPL. ECONOMIC OFFENCES WING, BANGALORE IN CRL.C.NO.39/2018 (ANNEXURE-F) B. QUASH THE ORDER DATED 31.03.2022 PASSED IN CRL.RP.NO.323/2018 BY THE LEARNED PRL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-1) (ANNEXURE-A).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners are before this Court calling in question entire proceedings in Criminal Miscellaneous No.01 of 2018 which later become C.C.No.39 of 2018 registered for an offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 ('the Act' for short).



2. *Shorn* of unnecessary details, facts in brief that are germane for consideration of the issue in the *lis*, are as follows:

The 1<sup>st</sup> petitioner is M/s Emcure Pharmaceuticals Limited, a drug manufacturing company engaged in the manufacture and sale of drugs (hereinafter referred to as 'the Company' for short). Petitioner Nos.2 and 3 who are accused Nos.2 ad 3 are the Managing Director and Director respectively of the said Company. The petitioners are in C.C.No.39 of 2018. The facts that led to the registration of crime are that on 5-01-2012, the Drugs Inspector, Bangalore visits M/s Tulasi Pharma and takes a legal sample of the drug manufactured by the Company, prepares Form No.17, issues it to the proprietor of M/s Tulasi Pharma and sends the sample so collected for test/analysis under the acknowledgment of the proprietor as required under Section 23 of the Act. On 6.01.2012, the sealed portion of the drug reaches Government Analyst at the Drugs Testing Laboratory, Bengaluru. The procedure stipulated under the Act was followed for drawing up and sending the sample.

3. On 21-07-2012, the Drugs Inspector who had sent the sample for its test receives the report of the drug in terms of



Form No.13 from the Government Analyst, Drugs Testing Laboratory, Bengaluru and the report was that **"Not of Standard Quality"** with respect to **"Assay for Folic Acid"**. On 24-07-2012, a notice was served upon M/s Tulasi Pharma under Section 18A and 18B of the Act along with original report. On the very day, the proprietor of M/s Tulasi Pharma gives a statement disclosing that it had purchased the said drug from the Company. It is here the Company comes into the picture.

4. On 30-07-2012, the Drugs Inspector served another copy of the test report on the Company in terms of Section 23(4)(iii) of the Act. The Company responds to the said notice. On 2-08-2012, the Drugs Inspector addresses a letter to the Managing Director of the Company, the 2<sup>nd</sup> petitioner herein seeking certain information with regard to the report which had observed that the drug manufactured by it was not of standard quality. This was replied to by the Company on 5-09-2012 denying the fact that the sample was "Not of standard quality" with respect of "Assay for Folic Acid".



5. On 8.10.2013, the Drugs Inspector submitted details of investigation to the Drugs Controller seeking his permission/sanction to prosecute the Company and the other petitioners herein under the provisions of the Act. Four years and 2 months after submission of the said requisition seeking sanction, the Drugs Controller permits institution of prosecution against the petitioners in terms of his communication dated 8-12-2017. On receipt of the said sanction, the Drugs Inspector registers a private complaint invoking Section 200 of the Cr.P.C. against the petitioners alleging contravention of Section 18(a)(1) which is punishable under Section 27(d) of the Act. Along with the complaint, an application seeking condonation of delay under Section 473 of the Cr.P.C. read with Section 5 of the Limitation Act was also filed. On 20<sup>th</sup> March, 2018, the concerned Court i.e., the Special Court for Economic Offences condoned the delay of 4 years and 10 months and takes cognizance of the offence.

6. Being aggrieved by the order taking cognizance and issuing of summons to the petitioners, the petitioners knocked



the doors of the Sessions Court in Criminal Revision Petition No.323 of 2018 on both i.e., against allowing the application seeking condonation of delay and taking of cognizance. The revision was partly allowed by accepting the application for condonation of delay and rejecting the order taking cognizance with a further direction to the trial Court to proceed in accordance with law. It is this order of the learned Sessions Judge and the order which condoned the delay are called in question in the present proceedings. In effect, the entire proceedings in C.C.No.39 of 2018 are called in question.

7. Heard Sri Pramod Nair, learned Senior counsel appearing for the petitioners and Smt. K.P.Yashodha, learned High Court Government Pleader for the respondent.

8. The learned senior counsel Sri Pramod Nair would contend that the fact of condoning delay or taking cognizance or even the order of the learned Sessions Judge permitting trial are all acts without jurisdiction, as the limitation in terms of Section 468 Cr.P.C. was long over in the case at hand. The offence alleged is under Section 27(d) of the Act which



mandates punishment for a maximum term of imprisonment of two years, and the limitation would run from the date on which the Drugs Inspector receives the sample from the Laboratory, which was on 21-07-2012. The complaint being registered on 2-01-2018 is close to 5 years and 7 months after such receipt and would, therefore, contend that the entire proceedings are vitiated on the ground of it being without jurisdiction.

9. On the other hand, the learned High Court Government Pleader would seek to justify the action of registering the complaint after 5 years and 7 months from 21.07.2012 on the ground that the Drugs Inspector was awaiting sanction from the hands of the Drugs Controller as obtaining under Section 33M of the Act and would submit that the issue stands covered by the judgments rendered by the Apex Court in the cases of **UDAI SHANKAR AWASTHI v. STATE OF UTTAR PRADESH AND ANOTHER** – Criminal Appeal No.61 of 2013 decided on **9-01-2013** and **RAKESH KUMAR JAIN v. STATE THROUGH CBI, NEW DELHI** – (2000) 7 SCC 656.



10. Contra to the said submission, the learned senior counsel appearing for the petitioners takes this Court through the Act to contend that sanction/permission would become necessary only in certain circumstances as obtaining sanction under Section 33M of the Act is not necessary in every circumstance.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the only issue that falls for my consideration is whether the impugned proceedings are hit by Section 468 of the Cr.P.C.

12. The afore-narrated facts are not in dispute. The link in the chain of events, narrated hereinbefore, are also not in dispute and are, therefore, not reiterated. To begin with, the receipt of report of sample from the Drugs Testing Laboratory would suffice. The sample was sent to the Laboratory by the Drugs Inspector on 5-01-2012. 6 months thereafter i.e., on 21.07.2012 the report of the Laboratory is received at the hands of the Drugs Inspector terming it to be "**not of**





**standard quality” for “Assay for Folic Acid”.** On receipt of the report, the complaint ought to have been registered by the Drugs Inspector, but he chose to seek sanction/permission for registration of crime that too after about a year of receipt of sample i.e., on 8-10-2013. The authority which was competent to sanction i.e., the Drugs Controller accorded such sanction/permission on 8-12-2017. By then it was 5 years and 5 months after receipt of the sample from the hands of the Laboratory. The Drugs Inspector registers the crime invoking Section 200 of Cr.P.C. on 2-01-2018 which is 5 years and 6 months after receipt of the sample for offence punishable under Section 27(d) of the Act.

13. Section 27 of the Act reads as follows:

**“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 exhibits or offers for sale or distributes,—

(a) any drug deemed to be adulterated under Section 17-A or spurious under Section 17-B and which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated



*or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:*

*Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:*

*Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.*

*Explanation.—For the purposes of the second proviso, the expression "relative" means—*

- (i) spouse of the deceased person; or*
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or*
- (iii) parent of the minor victim; or*
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or*
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—*
  - (a) the parent; or*
  - (b) a minor brother or an unmarried sister; or*
  - (c) a widowed daughter-in-law; or*
  - (d) a widowed sister; or*
  - (e) a minor child of a pre-deceased son; or*
  - (f) a minor child of a pre-deceased daughter where no parent of the child is alive; or*
  - (g) the paternal grandparent if no parent of the member is alive;*



(b) any drug—

- (i) deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or
- (ii) without a valid licence as required under clause (c) of Section 18,

*shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:*

*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 three years and of fine of less than one lakh rupees;*

(c) any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not less than seven years but which may extend to imprisonment for life and with fine which shall not be (sic less than) three lakh rupees or three times the value of the drugs confiscated, whichever is more:

*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 seven years but not less than three years and of fine of less than one lakh rupees;*

**(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.”***

*(emphasis supplied)*

The offence that is made punishable is under Section 27(d) of the Act. Section 27(d) of the Act mandates that contravention of any other provision of this chapter or any rule made there under shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to 2 years. Therefore, the maximum punishment that would become imposable upon one being proved guilty of offence under Section 27(d) of the Act would be for a period of two years. It is now germane to notice Section 468 of the Cr.P.C., it runs as follows:

***"468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.***

*(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.*



*(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall 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."*

*(emphasis supplied)*

Section 468 of the Cr.P.C. bars the concerned Court from taking cognizance after lapse of the period of limitation and the period of limitation is mandated to be one year if the offence is punishable with imprisonment for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Therefore, the case would fall within Section 468 of the Cr.P.C. In the teeth of the afore-quoted provisions of both the Act and the Cr.P.C. the facts are to be considered. The report of the Laboratory comes to the hands of the Drugs Inspector on 21-07-2012, the limitation according to Section 27(d) of the Act would expire on 20-07-2014. The complaint is registered on 2-01-2018, 3 years and 8 months after the period of limitation was over. Cognizance was taken by the learned Magistrate on 20-03-2018 by condoning the delay in registering



the crime, notwithstanding the fact that such an order would run counter to Section 468 of the Cr.P.C.

14. The ground on which condonation of delay was sought was that that the Drugs Inspector who was to register the complaint was awaiting sanction/permission from the hands of the Drugs Controller for registration of the crime and it is in the process of seeking sanction/permission 5 years and 7 months had passed by and, therefore, the delay was condonable. While submitting justification for condonation of delay, the learned High Court Government Pleader seeks to take support of Section 33M of the Act. It therefore becomes germane to notice Section 33M of the Act. Section 33M of the Act forms a part of Chapter IV-A of the Act. The applicability under Chapter IV-A of the Act and Section 33M of the Act read as follows:

*"[CHAPTER IV-A*

*PROVISIONS RELATING TO <sup>254</sup>[AYURVEDIC, SIDDHA AND  
UNANI DRUGS]*



**33-B. Application of Chapter IV-A.**—This Chapter shall apply only to <sup>255</sup>[Ayurvedic, Siddha and Unani drugs].

**"33-M. Cognizance of offences.—(1) No prosecution under this Chapter shall be instituted except by an Inspector with the previous sanction of the authority specified under sub-section (4) of Section 33-G.**

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter."

(Emphasis supplied)

Section 33B of the Act makes Chapter IV-A applicable to certain drugs which are Ayurvedic, Siddha or Unani. Section 33M of the Act deals with taking of cognizance of offences which mandates that no prosecution under this Chapter shall be instituted except by an Inspector with the previous sanction of the authority specified under sub-section (4) of Section 33G of the Act. Section 33M of the Act comes under Chapter-IVA. Chapter IVA exclusively deals with the provisions relating to Ayurvedic, Siddha and Unani drugs. Section 33M of the Act forms part of Chapter IVA which deals with the aforesaid drugs. Therefore, Section 33M of the Act cannot but be read to be for the purpose of those drugs enumerated in the said Chapter.



Sanction under Section 33G of the Act for registration of the crime or cognizance by the concerned court under Section 33M of the Act would only be for enumerated drugs in Chapter IVA. Section 33B of the Act makes entire Chapter IVA to become applicable only to Ayurvedic, Siddha and Unani drugs. An unmistakable inference that would flow from a perusal of the provisions extracted hereinabove would be that for a prosecution to be initiated under Section 27(d) of the Act, sanction would be required only if the drugs would be either Ayurvedic, Siddha or Unani. Section 33M of the Act mandates so only if the drugs are those which come within the Chapter.

15. The drugs in the case at hand are not the ones which are either Ayurvedic, Siddha or Unani. They are allopathic drugs and therefore, Section 33M of the Act on the face of it, is inapplicable to the fact situation. The sheet anchor of the learned High Court Government Pleader to lend support to the enormous delay in registering the complaint taking recourse of Section 33M of the Act would thus tumble down. There was absolutely no necessity to await sanction/permission from the





Drugs Controller to register the complaint as the legal sample of the drug that was drawn was not of either Ayurvedic, Siddha or Unani. If the Drugs Inspector has by taking recourse to a wrong provision of law sought sanction from the hands of the Drugs Controller to register prosecution, it cannot be said to be condonable as it was a question of jurisdiction. The statutory bar that kicks in terms of Section 468 of the Cr.P.C. could not have been condoned by both the Courts as it gets at the root of the matter.

16. It is not the date on which the Court takes cognizance of the offence, that would become applicable for the rigours of Section 468 of the Cr.P.C. to operate, but the date on which the crime comes to be registered. In the case at hand, the crime itself is registered after 5 years and 7 months of receipt of report of the sample from the hands of the Laboratory. Therefore, such delay which generates statutory bar could not have been condoned on the specious plea of the prosecution awaiting unnecessary sanction or permission on a misreading of the statute. Therefore, the entire proceedings right from registration of the crime are rendered unsustainable for they



are all without jurisdiction, only in the teeth of Section 468 of the Cr.PC.

17. In so far as the judgments relied on by the learned High Court Government Pleader are concerned, they are all distinguishable on facts of those cases without much ado. The Apex Court in the case of ***Udai Shankar Awasthi*** (*supra*) has no doubt held that in exceptional circumstances, the Court can condone the delay. The Apex Court was not considering or interpreting the statutory provision akin to or even Section 468 Cr.P.C. The other judgment also follows suit. The issue in the case at hand is to be considered on the bedrock of the statutes which have not been interpreted by the Apex Court in the aforesaid judgments. Therefore, those judgments would lend no assistance to the learned High Court Government Pleader.

18. For the reasons rendered *supra*, it becomes necessary to direct the competent authority to register the crime in such cases, in quick succession and not resort to ***red tapism*** and let the alleged guilty go scot-free on the plea of



limitation. The Authority should also necessarily peruse and understand the statute for registration of crimes in such matters, as delay will defeat the very object of penal action under the statute and it is always said that "**procrastination is the thief of time**"

19. For the aforesaid reasons, the following:

**ORDER**

I. The Criminal Petition is allowed.

II. The order dated 31<sup>st</sup> March, 2022 passed by the Principal City Civil and Sessions Judge at Bangalore in Criminal Revision Petition No.323 of 2018 as also the order dated 20<sup>th</sup> March, 2018 passed by the Presiding Officer, Special Court for Economic Offences, Bangalore in Criminal Miscellaneous No.1 of 2018 stands quashed.

**Sd/-  
JUDGE**