

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 26.09.2022
Pronounced on : 30 .09.2022

CRMC No.614/2016

Cipla Limited ...Petitioner(s)

Through:- Mr. R.K.Gupta, Sr. Advocate with
M/s Sachin Gupta, Vargesh and
Hamzah Hussaini, Advocates

V/s

State of Jammu & Kashmir and another ...Respondent(s)

Through:- Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE SANJY DHAR, JUDGE

JUDGMENT

1. The petitioner has challenged the complaint filed by respondent No.1/Drugs Inspector against it alleging commission of offences under Sections 18 read with Section 27(d) and Section 18 B read with Section 28 of the Drugs and Cosmetic Act, 1940 and the proceedings initiated thereon.

2. It appears that respondent No.1/Drugs Inspector has filed a complaint for offences under Section 18 read with Section 27(d) and Section 18 B read with Section 28 of the Drugs and Cosmetic Act, 1940 (hereinafter referred to as "the Act") against the petitioner and co-accused before the Court of Chief Judicial Magistrate, Jammu and on the

basis of the said complaint, learned Magistrate has, vide order dated 29th January, 2010, issued process against the petitioner as well as other co-accused.

3. In the complaint it has been alleged that on 24th July, 2007, the Drugs Inspector, Jammu conducted inspection of the premises of M/s Ajay Medicine Traders, a proprietorship concern of Sh. Ajay Gupta (co-accused) and he lifted the sample of drugs namely, Tab Norflox 400 and Tab Restyl 0.5 mg and in this regard he filled Form No.17 on spot. The sample was sent to the Government Analyst after its sealing and a report bearing No.CFDL/LS/Actt/tests/138/07 dated 25th April, 2008 was received by the respondent/complainant, whereby it was conveyed that the sample of the drug namely Tablet Restyl 0.5mg is not of standard quality. Accordingly, co-accused Ajay Gupta was asked to submit purchase record and other relevant information and after getting the same from the afore-named co-accused, communication dated 14th October, 2009 was sent by the complainant/Drugs Inspector to the petitioner's office at Jammu and copy of the test report along with drug sample portion was annexed with the said communication. Thereafter, purchase record was obtained and sanction for prosecution was also obtained in terms of sanction letter dated 07th February, 2009. Again vide letter dated 28th November, 2009, respondent No.1/Drugs Inspector sought details regarding total quantity of the drug received, names of the dealers from whom the drug has been purchased etc. After conducting investigation of the case, respondent No.1/complainant found that the

offences under Section 18 read with Section 27(d) and Section 18 B read with Section 28 of the Drugs and Cosmetic Act, 1940 of the Act have been established against the petitioner and co-accused and, accordingly, the complaint was lodged before the Trial Magistrate on 29th January, 2010.

4. The petitioner has challenged the complaint and the proceedings emanating therefrom, *inter alia*, on the ground that there is discrepancy between the particulars of the sample collected by respondent No.1 from the premises of the co-accused and the particulars of the sample, that was analyzed and tested by the Government Analyst, inasmuch as, in the Form No.17 issued by the Drugs Inspector, sample in the shape of strips containing 15 tablets were collected but as per Form No.13 annexed with the complaint, the Government Analyst has analyzed and tested the sample in the shape of strips containing 10 tablets. According to the petitioner, this goes on to show that the sample collected from the premises of the co-accused was not the same as was analyzed by the Government Analyst. On this ground it is urged that the proceedings against the petitioner are liable to be quashed. It has also been contended that in this regard the petitioner time and again sought clarification from the complainant, so that it could exercise its right under Section 25(3) of the Act but no response was given by the complainant/respondent in this regard, thus, depriving the petitioner of its valuable statutory right available in terms of the aforesaid provision. Lastly, it has been contended that the impugned complaint has been filed only on 29th

January, 2010 whereas the date of expiry of the drug, of which the sample was analyzed, was January, 2010 making it impossible for the petitioner to exercise its right of re-testing/re-analyzing the sample.

5. I have heard learned counsel for the parties and perused the record of the case including the trial Court record.

6. The first contention that has been raised by the learned Senior Counsel appearing for the petitioner is that there is discrepancy between the sample lifted from the premises of the co-accused and the sample that has been analyzed and tested by the Government Analyst. In this regard a perusal of the record of the trial Court shows that description of the sample lifted from the premises of the co-accused Ajay Gupta, as per Form No.17, is 4 x 3 x 15 tablets. In Form No.18, which relates to the sealing of the sample, description of the sample is also the same. However, in Form No.13 issued by the Government Analyst, the description of the sample analyzed by the said authority is 5 x 10 tablets. This clearly substantiates the contention of the petitioner that there is discrepancy and difference between the particulars of the sample that was collected from the premises of the co-accused and the particulars of the sample that was analyzed by the Government Analyst.

7. The petitioner has brought this fact to the notice of respondents by addressing communication dated 1st November, 2009 followed by communication dated 12th December, 2009. Copies of these communications have been annexed to the petition. The official

respondents in their reply have admitted the receipt of these communications and they have also admitted in their reply that there was discrepancy in the description of samples collected from the premises of the co-accused and the particulars of the samples given in the report of the Government Analyst. Vide communications dated 1st November, 2009 and 12th December, 2009, the petitioner had sought clarification in the above context and had expressed its intention to exercise its statutory right of seeking re-analysis of the sample in terms of Section 25(3) of the Act, but this clarification did not come forth.

8. Mr. Amit Gupta, learned AAG, appearing for the respondents, has submitted that the discrepancy referred to hereinabove was a clerical mistake. He has submitted that the sample analyzed by the Government Analyst was the same as had been lifted from the premises of the co-accused.

9. I am afraid, the contention of learned Additional Advocate General in this regard cannot be accepted. Neither the respondents have placed on record any document to show that it was a clerical mistake nor have they made even a whisper in this regard in their reply. In any case, the respondents have not conveyed this fact to the petitioner inspite of having admittedly received communications dated 1st November, 2009 and 12th December, 2009 from the petitioner well within statutory period of 28 days of receipt of copy of the report of the Government Analyst, which, as per the record, was communicated to the petitioner by the Drugs Inspector vide Notice No.DI/WS/D/780-782/09-10 dated

28.11.2009. The plea of clerical mistake raised by the learned AAG, therefore, cannot be accepted.

10. Thus, there is a serious doubt as to the fact whether the sample that was collected from the premises of the co-accused is the same that was subjected to analysis and test by the Government Analyst. The report of the Government Analyst is lynchpin of the prosecution case relating to the offences which are subject matter of the impugned complaint. When the report itself is shrouded in serious suspicion and it is not sure as to whether the report of the Government Analyst relates to the sample lifted from the premises of the co-accused, the very basis of the prosecution case gets knocked down.

11. There is yet another aspect of the matter which required to be noticed. Section 25(3) of the Act provides that a report signed by the Government Analyst would be evidence of the facts stated therein and such evidence would be conclusive unless the person whom the sample was taken or the person, whose name, address and other particulars etc have been disclosed has, within twenty eight days of the receipt of the report, notified in writing to the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report. Thus, a valuable statutory right has been conferred upon the manufacturer, retailer etc. to adduce evidence in controversion of the report of the Government Analyst. Failure to exercise such right makes the test report conclusive evidence against such manufacturer, dealer etc.

12. In the instant case, as already noted, the official respondents did not clarify it to the petitioner as to why there was discrepancy between the sample collected from the premises of the co-accused and the sample subjected to analysis by the Government Analyst. Had it been clarified to the petitioner well in time, it could have exercised its right under Section 25(3) of the Act regarding which the petitioner had repeatedly expressed its intention vide communications dated 1st November, 2009 and 12th December, 2009.

13. On account of inaction of the respondents, the valuable right of the petitioner to adduce evidence in controversion to the report of the Government Analyst has been lost. The matter does not rest here, the respondents have lodged the impugned complaint against the petitioner on 29th January, 2010 whereas the date of expiry of the Drug in question was January, 2010. Thus, no time was left with the petitioner to even seek an order of re-testing of the sample after filing of the complaint, as by that time the drug in question had already outlived its life. This clearly points to the fact that the respondents have by their inaction defeated the right of the petitioner to adduce evidence in controversion of the report of the Government Analyst. This negligence and inaction on part of the complainant is fatal to the prosecution case.

14) High Court of Bombay in **M/S Zim Laboratories, Bombay and others v. State of Maharashtra, 1999 Cri.L.J 2903**, in somewhat similar circumstances quashed the order of taking cognizance and set aside the complaint. While doing so, the Court relied upon following

observations of the Supreme Court in **Municipal Corporation of Delhi**

v. Ghisa Ram, AIR 1967 SC 970:

"It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as a conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein."

15) Similarly, in **Nikson Pharmaceuticals and Ors. V. State of Rajasthan and Ors, 2008(3 Crimes 573 (Raj.)**, the High Court of Rajasthan has observed that expiry date of sample is relevant and in order to safeguard the rights of accused to have sample tested from Central Insecticide Laboratory, it is incumbent upon the prosecution to file complaint expeditiously so that right of accused is not lost.

16) Again, in **Shiv Narain Bansal and another v. State of Haryana and another, 1996 Cri. L. J. 338**, a Single Judge of Punjab and Haryana

High Court, while dealing with a similar situation, made the following observations:

"12. In view of my discussion above, I find force in the argument of the learned counsel for the petitioners that the petitioners had informed the Drugs Inspector in time for sending their sample to get it tested from the Central Drugs Laboratory but it was the fault of the Inspector that the sample could not be sent to the Central Drugs Laboratory in time and it was sent only after its expiry date. The petitioners obviously have been deprived of their right given to them under [Section 25\(3\)](#) of the Act.

13. In this view of the matter, the petition is allowed. The complaint as well as other proceedings taken in pursuance thereof including the charge against the petitioners, is quashed."

17. In **State of Haryana v. Unique Farmaid (P) Ltd., (1999) 8 SCC 190**, the Supreme Court while dealing with a case under the provisions of Insecticides Act, which are analogous to the provisions contained in Section 25(4) of the Act, has observed as under:-

"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 Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose

would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.

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

18. Relying upon the aforesaid observations, the Supreme Court in the case of **Medicamen Biotech Limited and another v. Rubina Bose Drug Inspector, (2008) 7 SCC 196** quashed the proceedings on the ground that the accused in the said case had been deprived of valuable right under Section 25(3) and 25(4) of the Drugs and Cosmetic Act.

19. From the foregoing analysis of the legal position, it is clear that once it is established that valuable right of the accused to adduce evidence in controversion of the Government Analyst’s report is defeated due to acts and omissions of the Drugs Inspector, prosecution against the accused deserves to be quashed.

20. In the instant case, the sequence of events, as narrated in the preceding paras, shows that the respondent-Drugs Inspector has failed to adhere to the mandatory requirements, inasmuch as he has not taken steps with reasonable dispatch so that the petitioner could have availed its right to get the sample re-tested in accordance with the its right under

Section 25(3) of the Act. There has been inaction on part of the Drugs Inspector in responding to the communications of the petitioner seeking clarification regarding sample of the drugs and the record further shows that though the sample of the drug was collected on 24th July, 2007, report of Government Analyst was obtained only on 25th April, 2008 i.e. after about nine months. This clearly depicts inaction and negligence on part of the respondents, which has resulted in loss of valuable right to the petitioner.

21. Apart from the above, a perusal of order dated 29th January, 2010 passed by the learned Trial Magistrate shows that the order does not indicate as to what offences are made out against the petitioner and co-accused. Therefore, the order issuing process against the petitioner is mechanical in nature and it does not exhibit application of mind on part of the learned Magistrate. The same, therefore, is not sustainable in law.

22. For all what has been discussed herein above, the petition is allowed and the impugned complaint and the proceedings emanating therefrom are quashed.

(Sanjay Dhar)
Judge

JAMMU.
30.09.2022
Vinod, PS.

Whether the order is speaking : Yes
Whether the order is reportable: Yes