

(1998) 11 BOM CK 0023

In the Bombay High Court

Case No : Criminal Application No. 354 of 1992

Anant Rejendralal Thakore and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27

Citation : (1999) 101 BOMLR 604

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.K. Chandrashekhara Das, J.—This application is filed to quash and set aside four Criminal Complaints bearing Nos. 165/S, 166/S, 167/S and 168/S of 1978 pending before Metropolitan Magistrate, 28th Court, Esplanade, Bombay.

2. This case has a checkered history. The petitioners were distributors of drugs manufactured by M/s. Wyeth Laboratories engaged in manufacturing of bulk drugs, inter alia including Hydrocortisone, Hydrocortisone Acetate and Prednisolone. While so, on complaint received from the Sales Tax Department on 11.1.1973, the Drug Inspector enquired into the allegation that the petitioner had obtained bogus Havalas bills for drugs which covered smuggled items like prednisolone and Hydrocortisone. During the enquiry it was revealed that these items of drugs were sold to M/s. Glaxo Lab (1) Ltd. by the petitioners and Indo Pharmaceuticals Works Pvt. Ltd. It is also revealed that the petitioner firm had sold misbranded drugs as if they were manufactured by M/s. Wyeth Laboratories Limited. On the basis of the preliminary enquiry on 21st February, 1973, the Drug Inspector filed a First Information Report with the Police for offence u/s 18 read with Rules 65 and Section 27 of the Drugs and Cosmetics Act, 1940 against the Petitioners. On 2nd March, 1973, samples were drawn from the tins that were found from Messrs. Glaxo Laboratories (I) Ltd. and Messrs. Indo Pharma Pharmaceuticals Ltd. for laboratory testing. The Government Analyst reported

that the drugs Hydrocortisone Acetate and Prednisolone both are of "standard quality" and there was no adulteration or sale of inferior quality material. On this ground M/s. Glaxo Laboratories and M/s. Indo Pharma Pharmaceuticals were permitted by the Court to utilise the drugs for their manufacturing activities. When the investigation was concluded respondent State of Maharashtra filed four complaints before the Magistrate u/s 18(1)(iii) and 18(e) read with Rules 65(5) (3) and 19(c) read with Rule 65(6) and 18(c) read with Condition No. 4(i) of Licence punishable u/s 27 of the Drugs and Cosmetics Act, 1940 and Rules thereunder. On the basis of this complaint, process was issued against the petitioner. But the complaint was dismissed because of absence of the complainant before the Court on 12th Jan., 1978. On 14th June, 1978 after a lapse of nearly six months, respondent filed four fresh complaints which is at Exh. "A" collectively with identical allegations. The complaint also listed 65 witnesses for the prosecution. On 3rd March, 1980 on an application made by the Petitioners for dismissal of the complaints on the grounds of limitation and absence of jurisdiction, the learned Magistrate was pleased to dismiss the complaint holding that offence for breach of Rules were barred by limitation. Against the aforesaid order of dismissal, the respondent State filed Revision Application before this Court. On 24th/25th Jan., 1983, this Court upheld the contention of the petitioner on the point of limitation and remanded the complaints back for trial in respect of the offences confining only u/s 18(a)(2) read with Section 27 of the Act that is for sale of misbranded drugs. On 6th Sept., 1983, the prosecution commenced evidence and examined two prosecution witnesses. Till 15th March, 1983, only these two witnesses were examined out of 65 witnesses cited. The cross-examination of these two witnesses concluded on 17th Jan. 1991 after the elapse of 2 years. On the same day, A.P.P. appearing for the respondent State made a statement to the effect that he closes the case of the prosecution before framing charge. The case was adjourned for argument before charge on 27th March, 1991 a new Assistant Public Prosecutor who had just been appointed as incharge of the case, made an application for calling for additional witnesses prior to framing of the charges. This application was objected to by the petitioner. However, the learned Magistrate has allowed this application and reopened the matter and prosecution was permitted to examine further witnesses in this case. It is in this circumstances, the petitioner had approached this Court challenging the proceedings before the Magistrate mainly contending that once the prosecution closes the case, it is not legal or proper on the part of the Trial Court to reopen the matter and allow the prosecution to examine further witnesses.

3. None represented for the Petitioner. For the State, Mr. Deshmukh, A.P.P. appears.

4. I have gone through the order impugned in this case passed by the Magistrate allowing prosecution to examine further witnesses. It is true that it is the prerogative of the prosecutor to close the evidence before completing the examination of the person listed before the Court. But, if on the second thought,

if the prosecutor feels that the trial should be reopened and to continue to examine witnesses, which were in the list already, it is open to the prosecution to do so with the permission of the Court unless some serious prejudice is caused to the accused in formulating his defence. If the charge has been framed against the accused he will be given adequate opportunity to cross examine the witnesses, merely because once the prosecutor closed the evidence, on the appraisal of the materials on record by another prosecutor who was appointed in his place, it cannot be said that he cannot change the decision and request to the Court for continuing the examination of the witnesses which were already listed. It is not the case that a new material have been placed or new witnesses cited to be introduced. The Prosecutor was just asking for the permission to the Court to examine the witnesses which were already listed. As I noted earlier, unless there is serious prejudice caused to the accused is shown to the Court, I find nothing illegal in allowing the prosecutor to examine the witnesses already listed before the Court. Therefore, I am not inclined to interfere in the order passed by the Trial Court in this Court. However, the Trial Court has to take into consideration the long pendency of this matter and the petitioner is given opportunity to apply before the Court for closing the matter in view of the decision of the Supreme Court in *Raj Deo Sharma v. State of Bihar* 1998 (6) L.J. (SC) 41. If such application is filed the Magistrate may consider and pass appropriate orders in view of the aforesaid judgment of the Supreme Court.

5. With the above direction, application is dismissed. No orders as to costs.

Rule is discharged accordingly. Interim order stands vacated.