

(2012) 09 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 47951 of 2008

Arbind Chimanla Shah

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18A, 23, 25

Citation : (2013) 2 PLJR 200

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Bibhuti Prasad Pandey, P.K. Sinha and S.C. Giri, for the Appellant;
Jharkhandi Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Mandhata Singh, J.—Heard learned counsel for the parties. This is an application for quashing the cognizance order dated 7.6.2003 passed in Case No. 2 C4/2003 by Chief Judicial Magistrate, Munger.

2. Prosecution case initiated on complaint petition/prosecution report of Drug Inspector, Munger, in brief, is that he inspected the Drug Store of Munger Sadar Hospital. Sample of four drugs were collected by him, sent to the Centre Analyser at Gaziabad, (U.P.). Of samples, Doxycycline Cap. I.P. (100 Mg), Batch No. 22, Mfg. date January, 2000 was found below standard.

3. Further it is said that opportunity was given to M/s Pravin Pharma to explain the circumstances vide letter no. 310 dated 21.6.2001. Again a reminder dated 18.7.2001 was sent which ultimately was replied after withdrawing of the medicines from the market.

4. A single point is raised referring State of Haryana Vs. Unique Farmaid P. Ltd. Ors., . that no opportunity was given to him (petitioner) to adduce evidence in contravention of Government analyst's report which is mandatory. According to the learned counsel, after receipt of report of Government Analyst it is for Drug

Inspector to furnish its copy to the manufacturer for notifying in writing to the Drug Inspector or the Court before which any proceeding was pending with intention to adduce evidence in contravention of the report. According to him (learned counsel), complaint/prosecution report itself was filed in the court of Chief Judicial Magistrate on 19.7.2002 after the date of expiry of medicine. Expiry date of medicine is December, 2001.

5. Sub-section 4 of Section 25 of Drugs and Cosmetics Act, 1940 (hereinafter to be referred as "the Act") mentions about sample of the drug sent for test or analysis in any proposed Central Drugs Laboratory.

6. Sub-section 4 of Section 25 of the Act runs as follows:

25. Reports of Government Analysts.--(1) --

(2)-----

(3)-----

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug (or cosmetic) produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

7. But this sub-section 4 of Section 25 of the Act comes in picture only after sub-section 3 of Section 25 of the Act which mentions about right of the manufacturer and runs as follows:--

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken (or the person whose name, address and other particulars have been disclosed u/s 18-A) has, within twenty-eight days of the receipt of a copy of the report, notified in writing 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.

8. Right given under sub-section 3 of Section 25 of the Act is similar to sub-section 4 of Section 25 of the Act. In the instant case, opportunity to explain has already been given to the petitioner on 21.6.2001. Again a reminder was given on 18.7.2008. Explanation was given by petitioner much before expiry date of medicine but no claim was made on his behalf to get medicine tested by any other Central Government Laboratory for the purpose.

9. In State of Haryana Vs. Unique Farmaid P. Ltd. Ors., such opportunity was given only after expiry date of insecticides. In my view, once opportunity is given under sub-section 3 of Section 25 of the Act sub-section 4 of Section 25 of the Act is not applicable.

10. In the present case, drug has been tested by the Central Laboratory, Gaziabad (U.P.). In this quashing petition also several points are taken but nowhere it is mentioned that while the explanation was sought under sub-section 3 of Section 25 of the Act, petitioner was intending to get drug/sample tested by any other Central Laboratory.

11. Finding constitution of offence for cognizance prima facie the impugned order dated 7.6.2003 needs no interference. This quashing application is, accordingly, dismissed.