
(2010) 08 UK CK 0049
In the Uttarakhand High Court

Ashok Arora

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 17B, 17C, 18, 22, 22(3)

Citation : (2010) 08 UK CK 0049

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This criminal application, preferred u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed for quashing the judgment and order dated 19.5.2004 passed by the Additional Sessions Judge/FTC IV, Dehradun in Criminal Revision No. 35/2003, Ashok Arora v. State and Ors., and also against the order dated 3.6.2003 passed by CJM, Dehradun in Case No. 1198/2003, Drug Inspector v. Ashok Kumar and Ors.

2. Heard learned Counsel for the parties and perused the material on record.

3. In brief, the facts of the case are that the petitioner is the Managing Director of M/s Spachem Laboratories. On 15.6.2001 the respondent No. 2 in discharge of duties visited the shop of M/s Chawla Medical Stores, 7 Court Road Dehradun, where its proprietor Mr. Maninder Singh Chawla was present. During the course of inspection of above-said firm, two drug samples namely Spafen Tablets Batch SB003, DM=07/2000, DE=06/2003 purported to have been manufactured by M/s Spachem Lab. Pvt. Ltd. Muzaffarnagar and Procalm Tablets Batch T-283, DM-10/2000, DE 09/2003 purported to have been manufactured by M/s Medicon Biologicals, Iraniwadi, Mumbai were collected as per the provisions of the Drugs and Cosmetics Act, 1940 [hereinafter to be referred as the Act] for test and analysis as per the provisions of the Act. In compliance of the provisions of sampling under the Act, necessary forms prescribed under Drugs & Cosmetics

Rules, 1945 [hereinafter to be referred as the Rules], framed under the Act, were prepared on the spot in presence of prop. M.S. Chawla. Out of two samples described above, reported in respect of Spafen Tablets batch No.SB003, which was being declared not of standard quality by Govt. Analyst UP vide test certificate No.D/1537 dated 28.2.2003 was received in the office of respondent No. 2. After the receipt of Test Report, a show cause notice was served upon M/s Chawla Medical Stores, Dehradun to explain his conduct in the matter. That in the interest of allowing an opportunity of explanation to the manufacture of the Drugs i.e. M/s Spachem Lab. Pvt. Ltd., a show cause notice along with a copy of test report on Form 13 and a sealed sample portion was sent by the registered post parcel, however the parcel was returned with the postal remark that the Firm does not exist. It was also stated in the complaint that another drug sample of Ibuprofen Tablets Batch T-003 purported to have been manufactured by M/s Spachem Laboratories Pvt. Ltd. with similar fault collected from the Medical Stores of Haridwar by the respondent No. 2 which was also been declared substandard on same count by the Govt. Analyst CDL Kolkatta vide report dated 19.3.2003. That the Directors of M/s Spachem Lab. Pvt. Ltd. Muzaffarnagar and the Firm M/s Spachem Lab Pvt. Ltd. were found guilty for manufacturing of not standard quality drug falling under category "misbranded drug" u/s 17C and spurious u/s 17B(b) and (d) and also for obstruction in discharge of official duties of a Drug Inspector in finding the truth in respect of a misbranded and spurious drug which was manufactured and sold against public health in general in the State u/s 22(3) of the Act in collusion with the Postal Department which is evident from perusal of the receipt of parcel post and the alleged noting of the Postal Department regarding absence of a Drug Manufacturing Unit in a Mohalla (Munim Colony) of Muzaffarnagar which cannot be said to be unknown or not being in existence in the knowledge of postal people. On the basis of this complaint filed by the Inspector of Drugs, Uttaranchal on behalf of the Government, learned CJM Dehradun vide order dated 03.06.2003, took cognizance against the petitioner and summoned him under Sections 18(a)(i), 18(a)(vi) and 22/3, 27(c) and 22(3) of the Act. Feeling aggrieved, the petitioner preferred a revision which also came to be dismissed vide judgment and order dated 19.5.2004 passed by the Addl. Sessions Judge/FTC IV, Dehradun. Hence this petition.

4. Learned Counsel appearing for the petitioner argued that no offence is made out against him and the petitioner has been wrongly summoned by the court below. I do not find any force in this argument for the reason that on a perusal of the complaint lodged by the respondent, in which it is stated that (1) the sample taken by the Drug Inspector was of substandard quality (2) notice was also sent to the concerned manufacturer by the Drugs Inspector along with which the report of Government Analyst dated 28.2.2003 was also sent (3) the petitioner is the Director of the said manufacturer Firm i.e. M/s Spachem Labs. Pvt. Ltd. (4) the notice was intentionally not served upon the said Firm in connivance with the employees of the Postal Department, as has been mentioned in the complaint

itself and (5) another drug sample of Ibuprofen Tabs. Purported to have been manufactured by M/s Spachem Labs. Pvt. Ltd. With similar fault collected from the Medical Stores of Haridwar was also declared substandard on the basis of report of Govt. Analyst dated 19.3.2003, the offences punishable under Sections 18(a)(i), 18(a)(vi) and 22/3, 27(c) and 22(3) of the Act are prima facie made out against the petitioner on the basis of the above-said discussion and the trial court has rightly proceeded to summon the petitioner to face trial. The revisional court too was justified in affirming the order passed by the trial court on the basis of the evidence adduced before it.

5. Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused persons and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising jurisdiction u/s 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the complaint against the petitioner are taken at their face value and accepted in their entirety at this stage, I am of the view that the petitioner has rightly been summoned by the trial court to face trial. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

6. For the reasons recorded above, there is no force in this application. The application C482 is devoid of merits and is hereby dismissed. Interim order dated 14.10.2004 is vacated.