
(2015) 04 MAD CK 0033

In the Madras High Court

Case No : Criminal O.P. No. 22799 of 2014 and M.P. Nos. 1, 2 of 2014

Embiotic Laboratories (P) Ltd. and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(i), 23, 25(3), 25(4)

Citation : (2015) 2 LW(Cri) 601 : (2015) 4 MLJ(Cri) 56

Hon'ble Judges : K.B.K. Vasuki, J.

Bench : Single Bench

Advocate : P. Ramesh Kumar, Advocate, for the Appellant; C. Emalias, APP, for the Respondent

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—The petitioners herein are A1 and A2 in CC. No. 1626 of 2009 on the file of XV Metropolitan Magistrate, George Town, Chennai. The prosecution launched against the petitioners is for contravention of Section 18(a)(i) of Drugs and Cosmetics Act, 1940 for having manufactured and sold the drug called Enalapril Maleate Tablet, which was not of standard quality. The case was registered on the basis of the complaint given by the Drugs Inspector who visited the medical stores of Government Stanley Hospital, Chennai and who took samples and forwarded one sample for analysis to Government Analyst (drugs) Chennai-6. The report of the Government Analyst dated 27.02.2009 declared the sample as not confirming to LP. specifications with respect to the content of Enalapril Maleate. Thereafter, the particulars were called for from the medical stores and from Tamil Nadu Medical Services Corporations Ltd., Anna Nagar about the manufacturers and supplier. The complainant/Drugs Inspector having come to know that the first accused/Ms. Embiotic Laboratories represented by A2/ Harish K. Jain as Director was the manufacturer, sent a show cause notice to the first accused along with the copy of the analyst report and a portion of sealed sample. The second accused as a Director of the first accused, sent a reply on

24.04.2009 calling for protocol of analysis and the same was sent by the respondent on 04.05.2009. The petitioners thereafter sent a reply on 04.05.2009 disputing the correctness of the analyst report as if the drug was not that of the standard quality. The respondent having not found the reply to be satisfactory, filed the complaint against the petitioners herein.

2. The petitioners/A1 and A2 have come forward with the present criminal original petition to quash the proceedings mainly on the ground that the complaint having been filed in October 2009 and the petitioners having received the summons during July 2014 much after the expiry of shell life of the drug on February 2010, the petitioners lost their valuable right guaranteed under Section 25(4) of the Act to have the sample tested from the Central Laboratory. The petitioners have also in support of their contention that the failure to file the complaint on time and the failure to allow the petitioner to avail the opportunity of having the sample tested from the Central Laboratory before the shell life of the drug would render the prosecution to be vitiated and to be quashed, cited the following authorities :

(i) Medicamen Biotech Ltd. and Another Vs. Rubina Bose, Drug Inspector,

(ii) The unreported judgment of the learned brother judge S. NAGAMUTHU, J. dated 26.02.2010 in CrI.Rc. 125 of 2010 and

(iii) The unreported judgment of the learned brother judge G. RAJASURIA, J. dated 25.11.2010 in CrI.O.P. No. 10748 of 2010.

3. The relief sought for herein is seriously opposed by the learned Additional Public Prosecutor representing the respondent.

4. Heard the rival submissions made on both sides and perused the records.

5. The respondent/Drugs Inspector has in compliance with the procedure laid down under Section 23 took four samples of the Drugs and handed over one portion to the stores, where the sample was drawn and sent one portion to the Government analyst for test and sent other portion to the Court concerned and the last portion to the petitioners/manufacturers. While the sample was taken on 02.12.2008, one portion of the sealed sample was sent to the petitioners/accused on 13.04.2009. It is not in dispute that the show cause notice was sent only along with the analyst report and not with the protocol of analysis. The protocol report was sent only after having asked for by the petitioners on 04.05.2009. On receipt of the same, the petitioners immediately sent a request to send the sample to the Central Drugs Laboratory (CDL) at Calcutta for second opinion. However, the complaint was not immediately filed before the Court concerned and the complaint was filed only during October 2009 i.e., five months after the reply was received. The complaint was as per the records produced herein taken on file on 09.06.2011 and was repeatedly adjourned for sending fresh summons to the accused and finally summons were served to the accused on 04.07.2014. By that time, the shell life of the drug expired on February 2010.

As rightly argued by the learned counsel for the petitioners after the expiry of shelf life of the drug, no useful purpose will be served by making any request to send the sample to CDL, Calcutta. The petitioners are thus deprived of their valuable right available to them under Section 25(4) of the Act to have the sample tested by the Central Drugs Laboratory so as to ascertain the correctness of report of the Government Analyst relied on by the complainant, as if the drug in question was not of standard quality. Had the complainant being diligent enough to file the complaint within the reasonable time, the petitioners could have availed their right under Section 25(4) of the Act and such right is now lost to the petitioner because of lodging the complaint belatedly and delay in issuing the summons to the petitioners. As the petitioners are deprived of their right to defend the case effectively under Section 25(4) by adducing contra evidence, the prosecution launched against them is in violation of the principles of natural justice.

6. The Hon''ble Supreme Court in the judgment above cited *Medicamen Biotech Ltd. and Another v. Rubina Bose, Drug Inspector (supra)* under similar circumstances was inclined to quash the complaint and the Hon''ble Supreme Court while doing so, questioned the conduct of the complainant in not filing the complaint at the earliest point of time to enable the court to send the fourth sample for retesting within valid time. In the case decided by the Hon''ble Supreme Court also, the complaint was filed about a month before the expiry of shelf life of the drug and the complainant had no explanation for non filing the complaint much earlier. The appellants therein had not once but on atleast two occasions and within 28 days of the receipt of the show cause notice clarified that they intended to adduce evidence to show that the test report of the Government analyst was not correct and sent two communications expressing his intention to adduce evidence to controvert the facts given in the Government Analyst report and in spite of the same, the 4th sample with the Magistrate had not been sent for reanalysis. It was further found therein that the requests for retesting of the drug had been made by the appellants/accused therein in August/September 2001 and the complaint could not have been filed earlier and the 4th sample was also not sent for retesting well within time. The Hon''ble Apex Court having found that the appellants had been deprived of valuable right under Sections 25(3) and 25(4) of the Act, quashed the proceedings against them. Following the same view, the learned brother judges of our High Court in the unreported judgments referred to in the foregoing para 3 of this order, decided to under identical facts of the case, quash the proceedings.

7. Though in the instant case, some explanation is sought to be made in the counter filed by the respondent for not filing the complaint within reasonable time, the same is not sufficient and satisfactory enough to explain the delay either in filing the complaint or in issuing summons to the petitioners, which has as in the case decided by the Apex Court, deprived the petitioners herein of the valuable right available to them under Sections 25(3) and 25(4) of the Act. That being the factual and legal position, this Court by applying the observation of the

Hon"ble Supreme Court, is of the view that the proceedings initiated against the petitioners is contrary to relevant provisions of the Act and against the principles of natural justice and in the event of such prosecution being allowed to go on, it would amount to abuse of process of law and serious prejudice would be caused to the petitioners. As such, the proceedings initiated against the petitioners is liable to be quashed. In the result, this criminal original petition is allowed and the criminal proceedings in CC. No. 1626 of 2009 pending on the file of the XV Metropolitan Magistrate, George Town, Chennai stands quashed. Consequently, connected miscellaneous petitions are closed.