

(2012) 07 RAJ CK 0040

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 772 of 2001

Hansa Gauri and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 18A, 23, 25, 25(3), 25(3)(4)

Citation : (2012) 3 Crimes 537

Hon'ble Judges : Kailash Chandra Joshi, J

Bench : Single Bench

Advocate : Suresh Kumbhat, for the Appellant; K.K. Rawal, for the Respondent

Final Decision : Allowed

Judgement

Kailash Chandra Joshi, J.—This criminal misc. petition has been filed u/s 482 Cr.P.C. by 12 petitioners named in the criminal misc. petition, as partners of Firm M/s Talent Gujarat, Kohinoor Industries Compound, Ahmedabad. Except petitioner No. 6, who is the manufacturing Chemist Firm M/s Elite Pharma Pvt. Ltd., Ahmedabad. The short facts giving rise to this Cri. Misc. petition are that the Drug Inspector Mr. Rajesh Verma inspected the firm of present non-petitioner No. 2 Smt. Nidhi, w/o Mr. Deepak Ganatra, on 12.05.1997 in the presence of present non-petitioner No. 4 and took the sample of Lorazepam Tablet. The information in Form No. 17 was given and drug was purchased through Bill No. 5388 dated 12.05.1997. The sample was divided into 4 equal quantity and same were sealed and one part of the sample was sent to the Government Analyst, Jaipur vide memorandum dated 13.05.1997 for chemical analysis and the Public Analyst, after examining the sample, sent the report in Form No. 13 vide letter dated 02.03.1998. The drug inspector sent the copy of the report of the analysis to non-petitioner No. 4 vide his letter dated 09.03.1999 which was given dasti to non-petitioner No. 4 on 10.03.1998 and called for the record with regard to sale/purchase of the said medicine and also asked for recalling the distributed/sold

stock. Again reminder was sent for non-compliance and, thereafter, the Drug Controller directed the Drug Inspector to collect all necessary documents of manufacturing Firm M/s Talent Gujarat, Ahmedabad.

2. The Assistant Drug Controller, Jodhpur vide his letter dated 01.12.1998 accorded his sanction to prosecute Firm M/s Medisons, Opp. M.G. Hospital, Jodhpur. After completing all the above formalities, the Drug Inspector filed a complaint against petitioners, along with non-petitioner No. 2 to 4, in the court of learned Addl. Chief Judicial Magistrate No. 3, Jodhpur on 01.08.1999. The learned trial court, after taking cognizance, summoned all the petitioners. The summons were issued by the learned trial court on 03.05.2000 and same were served on the petitioners and the present petitioners appeared before the learned trial court on 28.06.2000. Due to the service of the process, much after the expiry of the date of the product, i.e. 1/2000, the petitioners have been deprived of an important and valuable right to get the sample reanalyzed by the Central Drugs Laboratory u/s 25(3) of the Drugs and Cosmetics Act 1940 (hereinafter referred to as "the Act") and due to this, inordinate delay in filing the prosecution and issuing the process by the learned trial court, the right conferred on the petitioners u/s (3) of Section 25 of the Act of 1940 have been deprived. Therefore, by way of this cri. misc. Petition, the petitioners have prayed to quash or set aside the proceedings in Cri. Case No. 194/1999 State vs. Smt. Nando Devi & Ors., pending in the court of learned Addl. Chief Judicial Magistrate No. 3, Jodhpur qua the present petitioners.

3. Heard learned counsel for the petitioners, the learned public prosecutor and the learned counsel for non-petitioners No. 2 to 4. Counsel for the petitioner contended that PW/1 Rakesh Verma was examined by the trial court and in cross examination he admitted that he did not sent copy of the Public Analyst's report to the manufacturing company and even he did not sent the part of the sample to the manufacturing company and there is no document available on record which shows that the copy of the analysis report was sent to the manufacturing company. In view of the admission of PW/1 Rakesh Verma, in cross-examination, and in the absence of any document available on record, the prosecution against the present petitioners is bad in the eye of law, because where such a valuable right has been infringed by the prosecution, the prosecution amounts to abuse of the process of law and the same is required to be quashed, while exercising the inherent powers conferred u/s 482 Cr.P.C.

4. Counsel for the petitioners relied on the judgment of the Hon"ble apex Court in Hindustan Ciba Geigy Ltd. v. State of Rajasthan 1995 CrLJ 618 and M/s Medicamen Biotech Ltd. v. Rubina Bose, Drug Inspector. 2008 (2) RAJ 531 : 2008 AIR SCW 2201. I have perused both the judgments cited by the learned counsel for the petitioners. In M/s Medicamen Biotech Ltd.'s case (supra), the Hon"ble apex court, while dealing with section 25(3)(4) and 27 of the Act, held that where the right to get sample analyzed by the Central Drug Laboratory is deprived, complaint is liable to be quashed.

5. In the present case, it is admitted case of the prosecution that the expiry date of the sample was January 2000 as per seizure memo and no copy of the report of the Public Analyst was sent to the firm M/s Talent Gujarat and M/s Elite Fine Private Ltd. and only after appearing in the court on 28.06.2000, the petitioners had the first opportunity to request the court to send the sample to the Central Drugs Laboratory, under the provisions of section 25(3) of the Act. Here it would be proper to refer to section 25 of the Act, which is as under :-

25. Reports of Government Analysts,--(1)The Government Analyst to whom a sample of any drug [or cosmetic] has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed u/s 18A, and shall retain the third copy for use in any prosecution in respect of the sample.

(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 18A] 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 controversial of the report.

(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 controversial 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 subsection (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.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

6. A reading of the aforesaid provisions would reveal that they lay down certain obligations as well as provides safeguards for a person from whom drug has been seized for analyzing and testing. Section 25(3) provides that 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 18A] 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 controversial of the report.

7. From the record of the trial court, it is clear that the petitioners appeared before the court after the expiry of the date of the drugs, and in the above circumstances, there was no opportunity before the petitioners to exercise their option, available u/s 25(3) of the Act.

8. It is settled position of law that powers conferred u/s 482 may be exercised by this Court where;

(i) the injustice which comes to light should be of a grave, and not of a trivial character,

(ii) it should be palpable and clear and not doubtful; and

(iii) there exists no other provision of law by which the party aggrieved could have sought relief.

9. In the present case, by the time the matter reached the court and the accused petitioners appears before the trial court, the life of the sample had already expired and no purpose would have been served by investigation. The report of the public analyst was therefore, not conclusive. A valuable right had been deprived of the accused to have tested the sample by the Central Drug Laboratory and in the facts and circumstances of the case, the accused had been deprived of their right in their defence. Similar view has been expressed by this Court in Hindustan Ciba Geigy Ltd.'s case (supra). The upshot of the above discussion is that the petition is allowed and the proceedings in the criminal case No. 194/1999 State v. Smt. Nanda Devi & Ors., pending in the court of learned Addl. Chief Judicial Magistrate No. 3, Jodhpur against all the 12 petitioners is hereby quashed.