
(2012) 09 RAJ CK 0019

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 570 of 2004

M/s. Anil Medical Store and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 268, 482
Drugs and Cosmetics Act, 1940 — Section 17A, 18, 19(3), 24, 25(3)

Citation : (2013) 1 WLN 432

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Vineet Jain, for the Appellant; Ashok Prajapat, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—This is petition under Sec. 482 Cr.P.C. against the order dt. 28.06.2004 passed by Additional Sessions Judge No. 1, Chittorgarh in Criminal Revision Petition No. 24/2002, vide which, the Sessions Judge has dismissed the revision petition of the petitioners and upheld the order dt. 28.01.1995 passed by Chief Judicial Magistrate, Chittorgarh taking cognizance against the petitioners for offence under Sec. 17-A read with Section 27-B of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act of 1940"). The facts in short are that the Drug Inspector seized the medicine by name "Relax U tablet" from petitioner-M/s Anil Medical Store on 24.10.1989. The expiry month of the said drug was June, 1990. The medicine was sent for chemical examination on 20.12.1989 and the report was received on 20.03.1990. As per the report of the Medical Analyst, the drug was stated to be "in bad condition and unfit for human consumption". The petitioners were never sent the report of the Chemical Analyst as required under Sec. 25(3) and 25(4) of the Act of 1940.

2. While praying for setting aside the orders impugned, learned counsel for the petitioners submitted that the petitioners have been deprived of their statutory

right as enshrined under Sec. 25(3) and 25(4) of the Act of 1940 as the chemical examination report was not made available to them. Secondly, it is contended that the alleged offence is punishable for a maximum sentence of three years. The complaint, as per the provisions of Section 268 Cr.P.C., having been filed after the period of three years is barred by limitation. Lastly, it was contended that the petitioner is protected under the provisions of Section 19(3) of the Act of 1940.

3. Heard.

4. The petitioners herein are the distributor and retailer. There is no allegation in the complaint that the said drug was tampered with. It is also not stated in the complaint that the drug at the time of purchase was not properly stored or was in a state that it was altered after purchase. Section 19(3) of the Act of 1940 reads as under:--

19(3)-A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves-

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that Section; and

(c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.

5. A perusal of the said provision shows that a retailer or distributor, who is not manufacturer of the drug, cannot be prosecuted, in case, he has exercised due diligence while acquiring the drug and has properly stored the same. In the absence of any such allegation, the petitioner is entitled to the protection granted to him under Sec. 19(3) of the Act of 1940.

6. Moreover, it is not disputed that the Chemical Analyst's report was not made available to the petitioners, thereby depriving them of their right under Sec. 25(3) and 25(4) of the Act of 1940.

7. The Hon''ble Apex Court in the case of Medicamen Biotech Ltd. and Another Vs. Rubina Bose, Drug Inspector, has pleased to hold in the similar circumstances as under:-

9. In State of Haryana Vs. Unique Farmaid P. Ltd. Ors., which was a case under the Insecticides Act which has provisions analogous to Section 25(4) of the Act, the Court found that the accused had indeed made a request to the Inspector for sending the sample for retesting within the prescribed time limit and as this request had not been accepted an important right given to an accused had been rendered ineffective on which the proceedings could be quashed. This is what the

Court had to say:

It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-Section (4) of Section 24 of the Act. Under sub-Section (3) of Section 24 report signed by the Insecticides Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticides Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence. In these circumstances, the High Court was right in concluding that it will be an abuse of the process of the Court if the prosecution is continued against the respondents, the accused persons. The High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals.

10. We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for re-analysis. The observations in *Amery Pharmaceuticals and Another Vs. State of Rajasthan*, are also to the same effect. We find that the aforesaid interpretation supports the case of the appellants inasmuch they had been deprived of the right to have the fourth sample tested from the Central Drugs Laboratory. It is also clear that the complaint had been filed on the 02.07.2002 which is about a month short of the expiry date of the drug and as such had the accused appellant appeared before the Magistrate even on 02.07.2002 it would have been well nigh impossible to get the sample tested before its expiry. In the affidavit filed to the petition by Dr. D. Rao, Deputy Drugs Controller, and in arguments before us, it has been repeatedly stressed that the delay in sending of the sample to the Central Drugs Laboratory had occurred as the appellant had avoided service of summons on it till 09.05.2005. This is begging the question. We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why

the complaint could not have been filed earlier and the fourth sample sent for retesting well within time. We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right under Sec. 25(3) and 25(4) of the Act which must necessitate the quashing of the proceedings against them.

8. Even otherwise, it is brought to the notice of this Court that the complaint against the manufacturer of the said drug, namely, M/s Toshniwal Drugs & Pharmaceuticals has since been quashed by this Court vide order dt. 09.04.2004 passed in S.B. Criminal Misc. Petition No. 193/1995. In view of the above, the criminal misc. petition is allowed. The order dt. 28.06.2004 passed by the revisional Court, as well as, the order dt. 28.01.1995 passed by Chief Judicial Magistrate, Chittorgarh taking cognizance for offence under Sec. 17-A read with Section 27-B of the Drugs and Cosmetics Act qua the petitioners is quashed. Any other proceedings in pursuance to the said complaint is also quashed.