
(2019) 07 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 27711 Of 2017

M/S Anod Pharma Pvt. Ltd. And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Drugs And Cosmetics Act, 1940 — Section 18(A), 18(A)(i), 25(3), 27(d), 34

Citation : (2019) 07 MP CK 0055

Hon'ble Judges : J.P.Gupta, J

Bench : Single Bench

Advocate : Anil Khare, Shashank Upadhyaya, J.S. Hora

Final Decision : Allowed

Judgement

1. This petition under Section 482 of the Cr.P.C. has been preferred seeking quashment of proceeding of Criminal Case No. 2428/2015 pending

before JMFC, Sehore under Section 18-(A) (i) read with Section 27 (d) of the Drugs and Cosmetic Act.

2. Relevant facts giving rise to this petition, briefly stated, are that on 28.12.2012, Drug Inspector, Sehore, took sample of the drugs from the Chief

Medical and Health Officer, Store, District Sihore. In the said samples drug Nifedipine capsules IP Batch No. AN5-23-7 was found sub-standard.

The manufacturing date of the drug was May, 2012 and the expiry was April, 2014 and the drug was manufactured by the petitioner no. 1/Company.

On submission of information, as per the provision of Section 18 (A) of the Drugs and Cosmetic Act, the petitioner no. 1/company was informed vide

letter dated 29.3.2014 by sending a copy of the analysis report with regard to sub-standard of the medicine. This information was received by the

petitioner no. 1/ company on 7.4.2014. As informed by the petitioner no. 1 by letter dated 10.7.2014, and thereafter the complaint against the petitioner

no. 1/ company, petitioner no. 2 to 6 disclosing them to be Directors of the company was filed and learned JMFC has taken the cognizance of the offence.

3. The aforesaid criminal proceeding has been challenged on the ground that in the present case, mandatory provision of Section 25 (3) of the Drugs

and Cosmetic Act has not been complied with, as before completion of 28 days, as required under Section 25 (3) of the Drugs and Cosmetic Act, the

drug was expired, therefore, the petitioners got deprived from their legal right to reanalyze the drug to establish that the drug was not sub-standard,

therefore, the proceedings of this case would be futile and no conviction can be held. It is further submitted that if the offence is committed by any

company, the persons who are Directors cannot be prosecuted merely on the ground that they are Directors. There must be some specific allegations

that the Directors are responsible for day to day business of the company or they are or anyone else is responsible for the alleged act constituted the

offence as required under Section 34 of the Drugs and Cosmetic Act. In the present case, in the complaint there is no such averment, hence petitioner

nos. 2 to 6 cannot be prosecuted, accordingly, their prosecution be quashed. The learned counsel has placed reliance on the judgment of Apex Court in

the case of Laborate Pharmaceuticals India Limited and ors. v. State of Tamil Nadu, (2018) 15 SCC 93 and State of Haryana v. Brij Lal Mittal and

ors. (1998) 5 SCC 343.

4. Learned Govt. Advocate appearing on behalf of the respondent has submitted that the prosecution is in accordance with law. At this stage, it

cannot be stopped on the basis of aforesaid contentions, hence petition be dismissed.

5. Having heard the learned counsel for the parties and on perusal of record, in view of this court the contentions advanced by learned counsel for the

petitioner have substance. The provision of Section 25 (3) of the Drugs and Cosmetic Act reads as under :-

â??25.(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 under section 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.â??

6. The aforesaid provision provides a right to the manufacturers to express its intention to adduce evidence in contravention of the analysis report

within 28 days after the receipt of the copy of the report. In absence of expressing this intention in writing the report will be conclusive. In the present

case, the petitioner no. 1/company has been informed by sending the report of the analysis on 29.3.2014 which was received on

7. 4.2014 and these facts are not controversial. Similarly the expiry date of the drug was April, 2014. The time period prescribed 28 days in the

Section 25 (3) of the Act will start from 8th April, 2014 and expire on 5th May, 2014. Before that date the drug was expired, therefore, the petitioners

could not get the opportunity to exercise their right as they had under Section 25 (3) of Drug and Cosmetic Act to re-analyze the sample. Honâ??ble

the Apex Court in the case of Laborate Pharmaceuticals India Limited v. State of Tamilnadu (2018) 15 SCC 93 held that as the valuable right of the

accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug, we are of the view

that as on the date of prosecution, if allowed to continue, would be a lame prosecution.

7. In view of the aforesaid principle of law, in the present case, if the prosecution continues, it would be also a lame prosecution and no purpose will be

served, therefore, it deserves to be quashed.

8. Apart from it, in the present case, the proceeding against petitioner nos. 2 to 6 also deserves to be quashed on the ground that in this case they have

been arrayed merely on the ground that they are Directors of the petitioner no. 1/company; and there is no averment in the complaint as required

under Section 34 of the Drugs and Cosmetic Act in which it is provided that where an offence under the Act has been committed by a Company,

every person, who at the time of the offence was committed was incharge and was responsible to the Company for conduct and business of the

Company as well as the Company shall be deemed to be guilty of the offence and

shall be liable to be punished. Further provided that if an offence is committed by the Company and it is proved that offence has been committed with the consent and connivance or is attributable to any neglect on the part of the Director, Manager, Secretary or other officer of the Company, such person shall also be deemed to be guilty of that offence and shall be punished. But, in this case, there are no averments which require to prosecute the Directors. The Honâ??ble Apex Court in the judgment of State of Haryana vs. Brij Lal Mittal and ors (1998) 5 SCC 343 has quashed the proceedings pending under the Drug and Cosmetic Act against the Directors on the ground of aforesaid infirmity. The principle laid down in the aforesaid case is very well applicable in the present case. Accordingly, the criminal proceedings are contrary to law against the petitioner nos. 2 to 6.

9. In view of the aforesaid discussions, this petition is allowed and the proceedings of Criminal Case No. 2428/2015 pending before JMFC, Sehore under Section 18-(A) (i) read with Section 27 (d) of the Drugs and Cosmetic Act is hereby quashed.