

(2018) 07 RAJ CK 0152

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 948 of 2010

M/s Endurance Health Care Ltd @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 10-07-2018

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 16(1)(a), 17(c), 18(a)(i), 18(a)(vi), 18B, 25, 25(1), 25(3), 25(4), 27(d), 28A, 34, 34(1)

Citation : (2018) 07 RAJ CK 0152

Hon'ble Judges : G R Moolchandani, J

Bench : Single Bench

Advocate : Sandeep Pathak, Aladeen Khan

Final Decision : Allowed

Judgement

1. Present petition is directed against the order of cognizance resorted to against the petitioners for the offences punishable under 16(1)(a), 17(c),

18(a)(i), 18(a)(vi), 18B, 27(d) and 28A of the Drugs and Cosmetics Act, 1940 (hereinafter referred as "the Act").

2. Learned counsel for the petitioners, putting reliance upon the following authorities Medicamen Biotech Ltd. and Ors Vs. Rubina Bose (2008) 7 SCC

196, State of Haryana Vs. Brij Lal Mittal and Ors (1998) 5 SCC 343, Laborate Pharmaceuticals India Ltd. and Ors. Vs. State of Tamil Nadu 2017

CriLJ 2931, Cadila Health Care Ltd. and Ors. Vs. The State of Rajasthan and Ors. 2007 CriLJ 1899 has contended that prosecution has presented the

complaint before the court below at the verge of expiry of the shelf-life of the drug, as such petitioners deprived of their valuable right accrued to them

to get the drug re-examined from Central Drugs Laboratory and has further contended that inspection was made on 23.04.2007, laboratory analyst

report came on 12.06.2007 but complaint has lethargically been filed before the

trial court in August 2009 and prior service of the notice, shelf-life of the drug got expired, resultantly petitioners have been deprived of exercising their valuable right, enunciated under the provisions of Section 25(3) & 25(4) of the Act and willful lapse on the part of the prosecution has caused prejudice to the petitioners, so prosecution is not sustainable hence, order of cognizance passed by learned court below and consequent proceedings be quashed, besides, learned counsel has contended that it is the mandate of law that prosecution must come assigning precise role of the accused person/s responsible for the business of the unit, to whom responsibility for the breach could be fastened, but no specific role has been assigned to the accused-petitioners and on this sole ground proceedings are liable to be quashed.

Per contra, learned Public Prosecutor has contended that drug sample has been found to be non-standardized, sample medicine was lacking prescribed potency/strength and was also not found to disintegrate, petition has been filed well in time, petitioners have not been subjected to detriment, petition lacks merit, so it be dismissed.

3. Heard submissions of both the sides and a thoughtful consideration was given to the material available on the record.

4. Appropriate it would be to extract Section 25 of the Act, which defines :-

â??REPORT 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 under Section 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 fact 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 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 controversion 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 controversion 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 Sub-section (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.â??

5. Admittedly, the drug sample has not been tested by Central Drugs Laboratory and it was tested by Government Analyst, Rajasthan.

6. Section 34(1) of the Act lays down :-

â??OFFENCES BY COMPANIES :

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of,

and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the

offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the

offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.â??

7. Certificate of analysis drawn under Section 25(1) of the Act of 1940 being Form No.13, reveals that sample drug tablet â??NIPAâ? was lacking

prescribed strength of the drug and sample has been found not conforming to disintegration.Â Analysis report relates to 02.05.2007.

Order-sheet dated 12.08.2009 depicts that complaint was adjourned and it

remained fixed for summoning of the accused persons.

8. It is not in dispute that Drug Sample was having an expiry and shelf-life upto August 2009 and by the time, petitioners could be summoned, noticed

and appeared in the court below, shelf-life of the sample/drug got expired, rendering petitioners, ineligible to exercise their valuable right to get the

drug/sample re-examined through Central Drug Laboratory, thus the petitioners have lost their valuable right only because of the laches in presenting

the complaint.

9. Annexure-1 copy of the complaint filed by Drug Controller, Jhalawar against sixteen non-petitioners-accused persons, disclose that the petition was

presented before the court below on 10.06.2009 and learned court below without even discussing specific role of the non-petitioner has passed order

dated 10.06.2009 by summoning all sixteen arrayed accused persons, petitioners hereinunder, by bailable warrants and matter was listed for

12.08.2009.

10. Dereliction is writ large on the face of the record, since on 12.11.2008, drug license of the petitioners was suspended for two days from

03.12.2008 to 04.12.2008 by Joint Commissioner (Drugs), Food & Drugs Control Administration because of nonconforming and failure of drug sample,

so it was incumbent upon the complainant to render an opportunity to the petitioners to deliver them, copy of the analysis report and to afford them an

opportunity for opting to get analysis of the drug re-done through Central Drugs Laboratory but misfeasance was committed by the complainant,

which resulted deprivation of valuable right of the petitioners.

11. Contents of Annexure-1, complaint, does not deal in respect of the mandate of Section 34 and it has not been divulged in the petition that what was

the act of respective accused / petitioner and who acted in capacity of responsible person and was in charge for carrying the business of M/s

Endurance Health Care Ltd at the time of obtainment of the sample.

12. Mandate of Section 25(4) of the Act postulates that accused can request the court to call for the sample and send it for analysis to Central Drugs

Laboratory but by the time the petitioners were summoned and served with the notice, shelf-life had already expired and petitioners lost their right to

get the sample re-analysed from Central Drugs Laboratory, thus the petitioners rightly pleaded that a valuable right has lost and prejudice has been

caused to them.

In view of the above discussed fact scenario, authorities relied by learned counsel for the petitioners supports the petitioner.

As a result, the petition is allowed and proceedings pertaining to complaint number 377/2009 pending before the Court of Chief Judicial Magistrate,

Jhalawar under the provisions of Sections 16(1)(a), 17(c), 18(a)(i), 18(a)(vi) 18B, 27(d) and 28A of the Act are quashed.