

(2019) 07 JH CK 0243

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 75 of 2012

M/S Laborate Pharmaceuticals India Ltd And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(i)(vi), 18(b), 23(4), 23(4)(iii), 25(2), 27(d)

Citation : (2019) 07 JH CK 0243

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Indrajit Sinha, Vipul Poddar, P.D. Agarwal

Final Decision : Allowed

Judgement

1. Heard Mr. Indrajit Sinha, counsel appearing on behalf of the petitioners along with Mr. Vipul Poddar, Advocate.

2. Heard Mr. P.D. Agarwal, A.P.P. appearing for the State.

3. This application has been filed for the following reliefs: -

"For quashing the entire criminal proceeding in connection with C-III-188/2010 under section 18(a)(i)(vi) 18(b) and 27(d) of the Drug and Cosmetic Act, 1940, pending in the court of Sri Uttam Anand learned Judicial Magistrate, Ranchi including order taking cognizance dated 29.04.2010/01.05.2010 by learned Chief Judicial Magistrate, Ranchi so far petitioners are concern".

4. Counsel for the petitioners submits that this case can be disposed of on the short point of non-compliance of the mandatory provisions of section 23(4) and 25(2) of the Drugs and Cosmetics Act, 1940 which is enough to quash the entire criminal proceedings against the petitioners including the order taking cognizance involved in the present case. The counsel submits that the present case is fully covered by the judgement passed by the Hon'ble Supreme Court

reported in (2018) 15 SCC 93 (Laborate Pharmaceuticals India Ltd. v. State of T.N.) and followed by this Court in Cr. M.P. No. 152/12 and Cr. M.P. no. 94/12, all decided in the case filed by the present petitioner only.

5. He further submits that the complaint case was lodged pursuant to a report received by the complainant from Central Drug Laboratory, Calcutta contained in Report No. 1896 dated 04.11.2009 in connection with the drug namely Ergometrine Meleate I.P. Tab. Batch No. 08ET-03, expiry date, December, 2010. The sample was received on 16.11.2009 and the prosecution was launched on 28.04.2010 under Section 18(a) (i) (vi) 18 (b) and 27(d) of the Drugs and Cosmetics Act, 1940. The said drugs were supplied by the supplier namely J. R. Pharma to the Government who was in turn supplied by S.R.M. Enterprises, Ranchi and the petitioner is the manufacturer of the drug. Counsel submits that as per the provision contained under Section 23(4) and 25 (2) of the Drugs and Cosmetics Act, 1940, it is mandatory that one sample of the drug as well as the report is required to be sent to the manufacturer so that the manufacturer may have an opportunity to get the sample re-tested. Counsel submits that he has made specific statement in paragraph Nos. 7, 8, 14, 16 and 17 of the present case that neither the report nor the sample were ever sent to the petitioners. He submits that a counter affidavit has been filed in the instant case and along with counter affidavit the opposite parties have annexed certain notices which relate to a drug other than drug involved in the present case, when compared with the prosecution report. Counsel submits that accordingly it is admitted fact from the records of this case that neither the sample nor its test report was ever sent to the petitioners in connection with the drug for which prosecution has been launched in the present case. Counsel submits that in such circumstances, the entire criminal proceedings including order taking cognizance is fit to be quashed as the mandatory provisions of Drugs and Cosmetics Act, 1940 has not been followed and great prejudice has been caused to the petitioners as at a later stage sample cannot be sent for testing which has admittedly expired. Counsel has relied upon judgment passed by the Hon'ble Supreme Court reported in (2018) 15 SCC 93 as well as orders passed by this Court in Cr. M.P. No. 152 of 2012 and Cr. M.P. No. 94 of 2012 to submit that under similar circumstances, the entire criminal proceeding has been quashed by the High Court as well as by the Hon'ble Supreme Court.

6. Counsel for the State while opposing the prayer does not dispute the fact that along with the counter affidavit the notices which have been filed do not relate to the drug which is involved in the present case, when compared with the details mentioned in the complaint petition.

7. After hearing the counsel for the parties and after considering the facts and circumstances of this case, this Court finds that the criminal case was initiated in connection with the drug, namely, Ergometrine Meleate I.P. Tab. Batch No. 08ET-03, expiry date, December, 2010 and it is the specific case of the petitioners that neither the sample nor the report was sent to the petitioners and

accordingly the entire criminal proceedings against the petitioners is vitiated. This Court finds that in the counter affidavit certain notices have been annexed, but none of them correspond to the Batch No. 08ET-03, expiry date, December, 2010 rather they relate to Ergometrine Meleate injection I.P. Batch No. 08EA-95/08EA-94 , expiry date, December, 2009 . Thus it stands admitted from the counter affidavit that neither the sample nor the test report in connection with the drug for which the criminal case was launched against the petitioners, were not sent to the petitioners. Even in the complaint petition there is no mention regarding sending the sample or the report of the drug to the petitioners. In the aforesaid facts and circumstances, there appears to be non-compliance of the statutory provision as contained in Section 23(4) and 25(2) of the Drugs and Cosmetic Act, 1940 so far as the petitioners are concerned. Such violation of the mandatory provisions of the said Act vitiates the entire criminal proceedings against the petitioners as it has caused great prejudice to the petitioners which cannot be cured at this point of time, as admittedly the shelf life of the drug has already expired.

8. This case is squarely covered by the judgement passed by the Hon'ble supreme court reported in the case of Laborate Pharmaceuticals India Ltd. v. State of T.N., reported in (2018) 15 SCC 93, at Para 8 and 9 it has been held as under:

"8.All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4-3-2015 though the same was filed on 28-11-2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. 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 date the prosecution, if allowed to continue, would be a lame prosecution.

9. Consequently and for the reasons alluded we are of the view that the present would be a fit case to interdict the criminal trial against the appellant-accused. We order accordingly. Therefore, CC No. 263 of 2015 pending on the file of the XVth Metropolitan Magistrate, George Town, Chennai is hereby quashed. The appeal is allowed and the order of the High Court is set aside."

9. The aforesaid judgement has been followed by this Court in Cr. M.P. No. 94 of 2012 (M/s. Laborate Pharmaceuticals India Ltd. and another vs. State of Jharkhand and another) and also in Cr. M.P. No. 152 of 2012 (M/s Laborate Pharmaceuticals India Ltd. And another vs. State of Jharkhand and another), wherein the criminal cases have been quashed on similar grounds.

10. As a cumulative effect of the aforesaid findings and in view of the aforesaid judicial pronouncements, the entire criminal proceeding as against the petitioners in connection with C-III-188/2010 under Sections 18(a)(i)(vi), 18(b) and 27(d) of the Drugs and Cosmetics Act, 1940, pending in the court of Sri Uttam Anand learned Judicial Magistrate, Ranchi including orders taking cognizance dated 29.04.2010/01.05.2010 by the learned Chief Judicial Magistrate, Ranchi, so far it relates to the petitioners, is hereby quashed.

11. This application is accordingly allowed.