
(2018) 04 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Pet u OF s 561-A No. 142 OF 2010

M/S LABORATE PHARMACEUTICALS INDIA LTD.

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND ORS

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 561A
Drugs and Cosmetics Act, 1940 — Section 18, 18(a)(1), 23(4), 25(2), 25(3), 25(4), 27
Jammu and Kashmir High Court Rules, 1999 — Rule 138(3)

Citation : (2018) 04 J&K CK 0023

Hon'ble Judges : M.K. HANJURA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. M/S Laborate Pharmaceuticals India Ltd. through its Quality Control Manager, namely, Dr. Rabindra Nath Tripathi, has filed the instant petition

under Section 561-A Cr.P.C seeking the indulgence of the this court in Quashing the order dated 27th of May,2005 passed inÂ the Complaint bearing

File No. 18, titled, â??State through Drug Inspector, DodaVs.â??M/s Laborate Pharmaceuticals India Ltd.â??. pending disposal before the Court of

learned Chief Judicial Magistrate, Doda as also the complaint and all the proceedings emanating therefrom.Â

2. The factual scenario of the case is that on the 27th May, 2005, the complainant-Drug Inspector, Doda filed a Compliant against the petitioner before the Court of learned Chief Judicial Magistrate, DodaÂ On the perusal of the Complaint and the allied documents, attached to it, the learned Chief

Judicial Magistrate, Doda opined that prima-facie an offence under Section 18 read with Section 27 of the Drugs and Cosmetics Act, 1940

(hereinafter referred to as the Act) is made out against the accused/petitioner and, accordingly, the learned Chief Judicial Magistrate, Doda directed

that summons be issued against the accused/petitioner for securing his attendance and appearance before the Court on the next date of hearing.

3. The crux of the Complaint is that the complainant-Drug Inspector, Doda lifted a sample of "Kold Time Tablets", Batch No. OKD-20,

manufactured by the petitioner in its laboratory situate at Panipat, from the premises of M/S Gupta Medical Surgical Bhalla, Bhaderwah, on Form No.

17, as per the procedure laid down under Section 23 of the Act. A portion of the sample so lifted was sent to the Government Analyst, combined

Food and Drug Laboratory, Jammu for analysis vide Memorandum No. DID/1-1/2001/606/07 dated 30th July, 2001. The Government Analyst vide

his test report No. CFDL/LS/Act/Testing/200203/168-A dated 31st day of March, 2003, received on 17th April, 2003 declared the drug to be sub-

standard. As required under Section 25(2) of the Act, the firm M/S Gupta Medical Surgical Bhalla, was provided with the copy of the test report, on

Form No. 13 vide No. SDI/JW/D/880-81 dated 17th April, 2003. The firm-M/S Gupta Medical Surgical Bhalla, Bhaderwah in its reply dated 07th

May, 2003, received on 27th May, 2003 could not submit the purchase record of the drug on the pretext that the shop housing the medical store was

caught in a fire, as a consequence of which all the documents including the invoices were burnt. However, the firm named M/S Cecil Pharmaceuticals

Gandhi Nagar, Jammu and M/S Bhagwati Medicines Traders, Kanak Mandi, Jammu as the suppliers, from whom the firm had purchased these drugs,

but could not furnish any documentary evidence. Both these firms were inspected and they reported in their written statement that the drug has

neither been purchased nor sold by them to any dealer. The matter was taken up with the manufacturer/petitioner vide No. SDI/JW/D/920-21 dated

26th July, 2003. The manufacturer/petitioner did not tender any reply, whereafter the Deputy Controller, Drug and Food, Jammu, vide his letter No.

DCO/J/238/1618-19 dated 19th August, 2003, received on 26th August, 2003 conveyed the approval of the Controlling Authority to the Drug Inspector

for launching the prosecution against the petitioner. It is also contended that the shelf life of the drug had expired in August, 2003 that is before the

date of filing the petition. In the end, the complainant has urged that the accused/petitioner be tried under Section 18(a)(1) of the Act for

manufacturing the drug, declared to be sub-standard.

4. Aggrieved by the Complaint of the Complainant and the order dated 27th May, 2005 vide which the learned Chief Judicial Magistrate, Doda took

the cognizance of the Complaint, the petitioner has filed this petition on the grounds, inter alia, that the Drug Inspector, i.e., respondent No. 4 in the

petition lifted the sample of "Kold Time Tablets" from the premises of M/S Gupta Medical Surgical Bhalla, Bhaderwah on the 28th day of July,

2001. The date of the manufacturing of the drug bearing Batch No. OKB-20 was September, 2003 and the date of its expiry was August, 2003.

5. The petitioner has further contended that the drug in question was sent to the Government Analyst for analysis vide Form No. 18. The

Government Analyst declared the drug in question to be sub-standard. The Drug Inspector sent a copy of the report of the Government Analyst to

the respondent No. 6 and directed him to disclose the name of the dealer from whom, he had purchased the drug in question along with the sale and

purchase record. The respondent No. 6, i.e., M/S Gupta Medical Surgical Bhalla, Bhaderwah, in reply to the aforesaid notice submitted that the

relevant record, as asked by the respondent No. 4 got damaged in an accidental fire, that inundated his shop. He supported this contention of his by

a copy of the FIR, which has been placed on record.

6. It is further pleaded that the Drug Inspector did not send the portion of the sample of the drug in question to the petitioner, as envisaged under

Section 23(4) of the Act. The petitioner vide his reply dated 13th August, 2003 sent through registered post on 18th August, 2003, took an exception

to it and challenged the report of the Government Analyst under Section 25(3) of the Act. The Drugs Inspector instead of sending the drug in

question to the Central Drugs Laboratory for analysis, filed a Complaint against the petitioner and the performa respondent No. 4 before the court of

the learned Chief Judicial Magistrate, Doda on the 01st day of September, 2003 that is after the expiry of the shelf life of the drug.

7. Heard and considered.

8. What requires to be stated at the threshold is that, admittedly, the shelf life of the sample was between 9/2k to 8/2003. The Complainant filed the

Complaint before the court of the learned Chief Judicial Magistrate, Doda on the 01st day of September, 2003. The learned Chief Judicial Magistrate,

Doda vide his order dated 16th of March, 2004 directed that the trial of the accused No. 2, i.e., the petitioner herein, shall be conducted separately and the present Complaint, i.e., the Complaint filed against M/S Gupta Medical Surgical Bhalla, Bhaderwah, shall be treated as a Complaint against the said firm only.Â The learned Chief Judicial Magistrate, Doda, accordingly, directed the complainant-Drug Inspector to present a separate Complaint against the petitioner. The complainantDrug Inspector filed the Complaint against the petitioner on the 27th day of May, 2005 in view of the directions extended by the learned Chief Judicial Magistrate, Doda.Â

9. Be that as it may, on the 01st day of September, 2003, when the Complaint was filed against M/S Gupta Medical Surgical Bhalla, Bhaderwah, and the petitioner, the shelf life of the sample had already expired. Not only this no reason has been put forward as to why the fourth sample has not been sent for retesting although the petitioner did seek the indulgence of the complainant in doing so. Therefore, the right of the petitioner under Sections 25(3) and 25(4) of the Act has been violated with impunity, as a sequel to which, the Complaint of the complainant cannot be maintained and the proceedings initiated against the petitioner require to be quashed.Â A cue can be had in this behalf from the law laid down by the Apex Court of the Country in the case of â??Medicamen Biotech Limited and Anotherâ??Vs.â?? Rubina Bose, Drug Inspector, reported in (2008) 7 SCC 196â??. which fits to a â??Tâ?? to the instant case and the relevant excerpts of which are reproduced below verbatim-et-literatim:-

â??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.Â Likewise, requests for retesting of the drug had been made by the appellant in August/September, 2001 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.Â Facts of the case suggest that the appellants have been deprived of a valuable right under Sections 25(3) and 25(4) of the Act, which must necessitate quashing of proceedings against them.â??

10. In the judicial precedent cited above, the shelf life of the drug had to expire

after a month subsequent to the date of filing the Complaint and in the case on hand, the shelf life of the drug, which was August, 2003 had already expired on the 01st day of September, 2003 that is the date when the Complaint was instituted by the complainant before the Court of the learned Chief Judicial Magistrate, Doda and above all no reason has been spelt out for not sending the fourth sample for retesting. Therefore, the Complaint cannot sustain in the eyes of law and giving an additional lease of life to it will be a sheer abuse of the process of law and to whip a dead horse.

11. Looking at the instant petition from another perspective, the sample of the drug was lifted on the 27th day of July, 2001. It was sent to the Government Analyst for analysis on the 30th day of July, 2001. The Drugs Laboratory, Jammu received the sample on the 27th day of July, 2001. The Government Analyst submitted his report on the 31st day of March, 2003. During this period, stretching to nineteen months approximately, the sample admittedly remained in the custody of the Government Analyst. Therefore, the chances of the tampering of the sample cannot be ruled out. Under what conditions was the sample stored in the laboratory and whether the sample could remain free from any defect during this interregnum has also not been spelt out anywhere.

12. In view of the preceding analysis, the petition bearing No. 142/2010 under Section 561-A of the Code of Criminal Procedure filed by the petitioner, M/S Laborate Pharmaceuticals India Ltd. is, allowed, as a corollary to which, the order impugned dated 27th of May, 2005 passed by the Ld. Chief Judicial Magistrate Doda in the Complaint bearing File No. 18, titled, "State through Drug Inspector, Doda Vs. M/s Laborate Pharmaceuticals India Ltd." and all the proceedings emanating therefrom including the complaint are quashed.

13. The petition along with the connected M.P. is disposed of accordingly.