

(2013) 07 KAR CK 0204
In the Karnataka High Court
Case No : Criminal P. No. 5948 of 2012

M/s. Modern Laboratories and Sri Arun Kumar Kharia	APPELLANT
Vs	
State at the Instance of Drugs Inspector	RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2)c, 469, 469(1)(b)
Drugs and Cosmetics Act, 1940 — Section 18(a)(i), 27(d)

Citation : (2013) 4 AKR 547 : (2013) ILR (Kar) 5889

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : A.N. Radhakrishna and Sri G. Desureddy, for the Appellant; Raja Subramanya Bhat, HCGP, for the Respondent

Judgement

K.N. Keshavanarayana, J.—Prosecution for violation of Section 18(a)(i) punishable u/s 27(d) of the Drugs and Cosmetics Act, 1940 is sought to be quashed by these petitioners, who are arrayed as accused 1 and 2, in CC No. 68/2012 on the file of the III Addl. Chief Judicial Magistrate, Mysore, on ground that the complaint lodged by competent Officer is barred by limitation provided u/s 468(2)(c) of Cr.P.C. I have heard the learned counsel for petitioners.

2. The learned counsel for petitioners by drawing attention of the court to the dates of drawing sample as referred to in the complaint and the date of complaint, contend that the complaint is barred by time as such court could not have taken cognizance of the aforesaid offence. According to the learned counsel for petitioners the period of limitation would commence from the date of drawing sample. According to the complaint allegations, though the sample was drawn on 11.09.2008, it was sent to the laboratory for testing and test report was received by the Complainant on 25.03.2009 and thereafter the complaint came to be filed on 22.03.2012. It is not seriously disputed by the learned counsel for petitioners that if the date of receipt of test report by CW 2 as stated in the complaint is taken into consideration, the complaint filed on 22.03.2012 is not barred by

time. However, he insisted that limitation would commence from the date of drawing sample itself.

3. As per Section 468(2)(c) of Cr.P.C. if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years the period of limitation would be three years. As per Section 27(d) of the Drugs and Cosmetics Act, 1940 (in short "the Act") offence in question is punishable with imprisonment which shall not be less than one year but which may extend to two years. Therefore, the period of limitation applicable to the case on hand is three years. Section 469 of Cr.P.C. deals with commencement of the period of limitation. As per Section 469(1)(b) of Cr.P.C. where the commission of an offence was not known to the person aggrieved by the offence or to any Police Officer, the period of limitation would commence on the first day on which such offence comes to the knowledge of such person or to any Police Officer, whichever is earlier.

4. In the case on hand though samples from the drug in question was drawn on 11.09.2008 at Primary Health Center situated at Bolanahalli, Hunsur Taluk, Mysore District, test report as to the quality of the said drug was received from the Laboratory only on 25.03.2009. It was only after receipt of the test report the Complainant came to know that the drug was not of standard quality and thus, there is violation of Section 18(a)(i) of the Act.

5. Having regard to the language of Section 469(1)(b) of Cr.P.C., I find no force in the contentions of the learned counsel for petitioners that date of drawing of the sample should be the starting point for calculation of the period of limitation. I am of the considered opinion that in view of the provisions of Section 469 Cr.P.C. the date of receipt of the test report by the Complainant as to the quality of the drugs is relevant for the purpose of finding out the period of limitation. Mere drawing of samples would not give the knowledge as to the quality of the drugs and only after test is conducted the quality of the drugs could be ascertained. Then only it would be known as to whether the drug answers the standards prescribed. In view of the above discussions, the contention of the learned counsel for petitioners that the complaint filed is barred by period of limitation is rejected. Hence, I find no merit in this petition, therefore, the petition is dismissed.