
(2023) 09 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 10 Of 2023

M/s Shine Pharmaceuticals Ltd And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Drugs And Cosmetics Act, 1940 — Section 27(d)
Code Of Criminal Procedure, 1973 — Section 468, 473

Citation : (2023) 09 JH CK 0021

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nitin Kumar Pasar, Sidhi Jalan, Shubham Gurung, Gourav Kaushalesh, Devesh Krishna

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Nitin Kumar Pasari, learned counsel for the petitioner and Mr. Devesh Krishna, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceedings including the order taking cognizance dated 21.09.2015 passed in Drug and Cosmetic Case No.190 of 2015, whereby, the learned court has been pleased to take cognizance under Section 27(d) of the Drugs and Cosmetic Act, 1940 against the petitioners, pending in the court of the learned Additional Judicial Commissioner-II, Ranchi.

3. The complaint petition was filed alleging therein that on 12.03.2007, inspection was carried out by Sri Arun Kumar, the then Drug Inspector, Ranchi-I in M/s A.R. Medical Agencies and sample of ALORA 0.25, B. No.03A57, manufacturing date September, 2006, expiry date August, 2010, manufactured by the petitioners company was collected for test and analysis in Form-17. It was alleged that the Government Analyst, Central Drug Testing Laboratory, Kolkata in

the report dated 05.11.2009 declared the medicine to be sub-standard. Vide memo dated 19.11.2009, M/s A.R. Medical Agencies was provided with the original copy of the test report in Form-13 and was directed to stop the distribution of the said medicine and was asked to provide Purchase Form. Vide the said letter, the petitioners company was informed about sub-standard medicine and was asked to collect one part of the sample from the office. M/s A.R. Medical Agencies vide memo dated 04.01.2010 informed that the said medicine was supplied by the petitioners company vide Form No. STN-997/06-07 dated 06.01.2007 and STN-1113/06-07 dated 10.02.2007. It was alleged that the petitioners company has committed offence under Section 27(d) of the Drugs and Cosmetic Act, 1940.

4. Mr. Nitin Kumar Pasari, learned counsel for the petitioners submits that the prosecution report was submitted after lapse of more than five years from the date of collection of sample. He further submits that the learned court has been pleased to take cognizance under Section 27(d) of the Drugs and Cosmetic Act, 1940 vide order dated 21.09.2015. He submits that the inspection was made on 12.03.2007 and the report of the Government Analyst was dated 05.11.2009, whereas, the case was filed on 27.08.2014 after lapse of more than five years. He further submits that in view of Section 468 Cr.P.C., the case is barred by time as the punishment under Section 27(d) of the said Act is prescribed only for two years. He submits that the case of the petitioners is fully covered in view of the judgment passed by the Hon'ble Supreme Court in *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherain and others*; [(2014) 2 SCC 62]. He relied upon paragraph 51 of the said judgment, which is quoted hereinbelow:

"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* which is followed in *Japani Sahoo* lays down the correct law. *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

5. On the other hand, Mr. Devesh Krishna, learned counsel for the respondent-State submits that the learned court has looked into the petition filed under Section 473 Cr.P.C. and by way condoning the delay, the learned court has taken cognizance against the petitioners. He submits that there is no illegality in the order taking cognizance. He further submits that since the medicine is of sub-standard and in view of that, the learned court has rightly taken cognizance against the petitioners.

6. In view of the above submission of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly the inspection was made on 12.03.2007 and the report of the Government Analyst

was dated 05.11.2009, whereas, the case was filed on 27.08.2014 after lapse of more than five years and the learned court has been pleased to take cognizance against the petitioners under Section 27(d) of the Drugs and Cosmetic Act, 1940 vide order dated 21.09.2015. The punishment under Section 27(d) of the Drugs and Cosmetic Act, 1940 is prescribed only for two years and if such a situation is there, Section 468 Cr.P.C. will come into play. Further, extension under Section 473 Cr.P.C. may be there, however, the delay is required to be properly explained. In the case in hand, only the case of extension was made on the ground that the Drug Inspector was advised by the higher authority to file the complaint.

There is no proper explanation. In view of that, the explanation is bad in law.

7. In view of the above facts and considering the judgment passed by the Hon'ble Supreme Court in Sarah Mathew (supra), the entire criminal proceedings including the order taking cognizance dated 21.09.2015 passed in Drug and Cosmetic Case No.190 of 2015, pending in the court of the learned Additional Judicial Commissioner-II, Ranchi are quashed.

8. Accordingly, this petition is allowed and disposed of.

9. Interim order, if any granted by this Court, stands vacated.