
(2014) 08 BOM CK 0199

In the Bombay High Court

Case No : Criminal Application (APL) No. 378 of 2014

M.S. Theivendran and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 18-A, 23, 25, 25(3), 25(4)

Citation : (2015) ALLMR(Cri) 1394

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : Yusuf Iqbal Yusuf Neville Majra instructed by Yusuf and Associates, Advocates for the Appellant; A.R. Patil, A.P.P, Advocates for the Respondent

Judgement

M.L. Tahaliyani, J.—This application under Section 482 of the Criminal Procedure Code has been filed for quashing the proceeding pending against the applicants in the court of learned Chief Judicial Magistrate, Thane vide Criminal Case No.357/2011. The said criminal case has been filed against the applicants and accused No.4 by respondent No.2, who was working as a Drug Inspector, attached to office of the Joint Commissioner, Food and Drug Administration, Maharashtra State, Thane-400 604. Applicant No.5 is a registered firm. Applicant No.1 is a Managing Partner. Applicant Nos.1 to 5 were arrayed as accused Nos.1 to 3, 5 and 6 in Criminal Case No.357/2011 pending in the court of learned Chief Judicial Magistrate, Thane.

2. The complainant/respondent No.2 had alleged that applicant No.5 had manufactured "Bioclin, Prebiotic & Probiotics Sachets 1 gram", which were not of standard quality. It was alleged that total Viable count of Anaerobic Bacteria in the sample was less than the permissible limits. It is admitted position that applicant No.1 was Managing Partner of applicant No.5. Applicant Nos.3 and 4 were employees of applicant No.5 and applicant No.2 is a sleeping dormant partner of applicant No.5. The applicants do not challenge the collection of the

sample from M/s Gayatri Agencies situated at Thane. The applicants, however, disputed the report of Government Analyst and wanted fresh analysis of one of the samples in custody of respondent No.2. The request of applicants was not considered by respondent Nos.1 and 2 and without getting the report of Central Drugs Laboratory a complaint has been filed against the applicants for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 for alleged manufacture of sub-standard drug.

3. The issue raised by the applicants in the present application is very short. It has been contended that the applicants did not get opportunity of testing the second sample from the Central Drugs Laboratory. The sample was collected on 30-9-2010, Government Analyst's report was received on 24-2-2011 and complaint has been filed on 31-10-2011. The applicants have admittedly communicated to respondent No.2 that they were not satisfied with the report of the Government Analyst. It was submitted before this Court that the valuable right of the applicants available to them under Section 25(4) of the Drugs and Cosmetics Act, 1940 has been infringed by respondent No.2 by filing the complaint as late on 31-10-2011. To understand the contention of the applicants, it would be just and proper to reproduce Section 25 of the Drugs and Cosmetics Act, 1940, which runs as under :

"25.Reports 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 18-A), 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 facts 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 18-A) 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 contravention 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 contravention 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."

4. A perusal of Section 25(3) of the Drugs and Cosmetics Act, 1940 clearly shows that the report of Government Analyst shall be used as a conclusive proof unless the manufacturer within twenty-eight days of receipt of copy of the report, notified in writing the Inspector or Court before which any proceeding in respect of sample are pending that he intends to adduce evidence in contravention of the report. It has come on record that the applicants had intimated to respondent No.2 on more than one occasions that they did not agree with the report of Government Analyst. In the circumstances, what the court was required to do has been provided under Section 25(4) of the Drugs and Cosmetics Act, 1940. The court is under obligation to cause the sample of drug or cosmetic produced before it under sub-section (4) of section 23 of the Act to send for test or analysis. The Central Drugs Laboratory 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. As such in the present case, since the sample had already not been tested or analyzed by the Central Drugs Laboratory, it was required to be sent to the said laboratory by the Magistrate on its own accord or on the application made either by the applicants or by respondent No.2.

5. In the present case, as already stated by me, the applicants claim that the valuable right available to them under sub-section (4) of Section 25 of the Drugs and Cosmetics Act, 1940 has been infringed inasmuch as the shelf value of the product was to get lost in the month of November 2011. Though the sample was collected on 30-9-2010 and Government Analyst's report was received on 24-2-2011 and though the applicants had disagreed with the report of Government Analyst, respondent No.2 had chosen to file the complaint on 31-10-2011. As such it is contended that even if the applicants wanted to avail their right under Section 25(4) of the Drugs and Cosmetics Act, 1940, the same was not available to them because the shelf value of the product was getting lost in November 2011.

6. The learned Counsel has relied upon the judgment of the Hon''ble Supreme Court in the matter of Medicamen Biotech Ltd. and Another Vs. Rubina Bose, Drug Inspector, . In the said case, the Hon''ble Supreme Court had quashed the proceedings and had allowed the appeal filed against the order of the High Court. After having gone through the judgment relied upon by the applicants and after having considered the admitted facts, I have come to the conclusion that the valuable right available to the applicants under Section 25(4) of the Drugs and

Cosmetics Act, 1940 has been infringed by respondent No.2 by filing the complaint on the last day of October 2011 in respect of the alleged sub-standard quality drug, the shelf value of which was getting lost in November 2011. It is abundantly clear that it was not possible for the applicants to make prayer to the learned Magistrate in the month of November 2011 to get the sample analysed from Central Drugs Laboratory. The steps, if any, taken either by the applicants or by the Court on its own accord were of no use in view of the expiry date of the product in question.

7. For all these reasons, I pass the following order.

- i) The application is allowed.
- ii) The Criminal Case No.357 of 2011 pending in the Court of Chief Judicial Magistrate, Thane against the applicants stands quashed.
- iii) The bail bonds of the applicants, if any, stand cancelled.