
(2010) 07 UK CK 0145
In the Uttarakhand High Court

Pradeep Gupta and Another

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs (Prices Control) Order, 1995 — Section 14(3)
Drugs and Cosmetics Act, 1940 — Section 18, 23(4), 25(2), 27
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2010) 07 UK CK 0145

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This criminal application, preferred u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed for quashing the summoning order dated 29.10.2004 and to the entire proceedings of Criminal Complaint Case No. 1791 of 2004, State v. Deepak Gupta and Ors., pending in the court of CJM, Dehradun.

2. Heard learned Counsel for the parties and perused the material on record.

3. In brief, the facts of the case are that the petitioners are the Directors of the Firm, namely, M/s Seemax Pharmaceuticals Ltd., Jarauda, Muzaffarnagar. On 29.10.2004, a complaint was lodged by the respondent before the court below stating therein that on 5.3.2003, he inspected the CMSD Store of CMO Dehradun in presence of Dr. Madhur Chandra SMO & Incharge of CMSD Stores. During the course of inspection from the drugs stocked in the premises of CMSD Store of CMO Dehradun, Sample of Oxytetracycline Capsules I.P. Batch No. COT-01 D.M. of 2002 D.E.-12/2004 purported to have been manufactured by M/s Seemax Pharmaceuticals Ltd., was collected for test and analysis as per the provisions of the Drugs & Cosmetics Act, 1940 [hereinafter to be referred as the Act] and sent the same to Government Analysis, Uttaranchal at CDL Kolkata. Thereafter, the

Government Analyst vide report dated 28.7.2003 declared the above-said Capsules not to be of standard quality. After the report of above test, CMO Dehradun was required vide letter dated 25.9.2003 to disclose the name and address of the firm/person by whom the drug was supplied and to submit the records pertaining to the supply of the said drug. After that CMO Dehradun vide letter-dated 21.10.2003 informed that the noted drug was manufactured and supplied by M/s Seemax Pharmaceuticals Ltd. (of which the petitioners are the Directors). Thereafter, on the basis of the information and documents provided by the CMO Dehradun, a show cause notice along with a sealed sample portion of the said drug and copy of test report signed by Government Analyst was served upon the said Firm, as required u/s 23(4) and 25(2) of the Act to explain his conduct in the case. Thereafter, the said Firm submitted his explanation on 6.1.2004, however the explanation so furnished by the Company was not satisfactory, as the Firm has not rebutted the report of Central Drug Laboratory. Hence, the said Firm was found guilty of manufacturing for sale and selling a drug, which is not of standard quality and, therefore, he has committed offence for the breach of Section 18-(a)(1) of the Act, which is punishable u/s 27 of the said Act. Thereafter, the matter was finally referred to Drug Licensing & Controlling Authority, Uttaranchal who after consideration of all the facts and findings of the case, directed the respondent to launch prosecution against the accused Firm and its Directors for the offences u/s 18(a)(i) and 18(a)(vi) of the Act and also for the violation of provisions of the Drugs (Prices Control) Order, 1995. It was also stated that the said Firm has supplied the said Capsules to the Government Hospital at a much higher rate than the market rate. The ceiling price in blister packing of 4 capsules each is Rs. 2.50 i.e. Rs. 620.50 per 1000 capsules, whereas the Firm supplied the impugned drug at the rate of Rs. 780 per 1000 capsules each, which is also higher. The firm has also violated the provisions of Para 14(3) and 15(2) of DPCO by not submitting the price list to State Drug Controller, Uttranchal. It was further stated that the Firm has not only supplied the substandard drug to the Government which was to be distributed to the common people but also cheated the government authorities and evaded public money by charging higher price than the ceiling price at which the drug is available in the market in retail and thus, committed the offence for the breach of Section 14(3) of the Drugs (Prices Control) Order 1995 r/w Section 3/7 of the Essential Commodities Act. On the basis of this complaint filed by the Inspector of Drugs, Dehradun on behalf of the Government, learned CJM Dehradun vide order dated 29.10.2004, took cognizance against the petitioner and summoned him under Sections 18(a)(i), 18(a)(vi) and 27 of the Act and also u/s 14(3) of Drugs (Prices Control) Order, 1995 r/w Section 3/7 of the Essential Commodities Act. Feeling aggrieved, the petitioner has filed this application.

4. Learned Counsel appearing for the petitioners argued that no offence is made out against them and the petitioners have been wrongly summoned by the court below. I do not find any force in this argument for the reason that on a perusal of the complaint lodged by the respondent, who is an Inspector of Drugs, Dehradun

as well as on perusing the report of Government Analyst dated 28.7.2003, in which it is stated that the Oxytetracycline Capsules IP, were not of the standard quality, the offences punishable under Sections 18(a)(i), 18(a)(vi) and 27 of the Act and also u/s 14(3) of Drugs (Prices Control) Order, 1995 r/w Section 3/7 of the Essential Commodities Act are prima facie made out against the petitioner on the basis of the above-said discussion and the trial court has rightly proceeded to summon the petitioner to face trial.

5. Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused persons and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising jurisdiction u/s 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the complaint and perusing the report-dated 28.7.2003 of the Government Analyst are taken at their face value and accepted in their entirety, I am of the view that the petitioners have rightly been summoned by the trial court. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

6. For the reasons recorded above, there is no force in the application. The application C482 is devoid of merits and is hereby dismissed. Interim order dated 28.03.2006 is vacated.