
(1995) 07 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3797-M of 1993

Shiv Narain Bansal and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

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

Citation : (1996) CriLJ 338 : (1996) 1 RCR(Criminal) 114

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : H.S. Sawhney and Jasleen Sawhney, for the Appellant; S.K. Kapur, AAG, for the Respondent

Final Decision : Allowed

Judgement

H.S. Brar, J.—This is a petition u/s 482 of the Code of Criminal Procedure, 1973, for quashing the complaint filed against the petitioners under the Drugs and Cosmetics Act, 1940 (hereinafter called the Act) and for quashing all proceedings taken in pursuance thereof.

2. Factual position as stated in the petition is as under:

3. Petitioner No. 1 is running a Medical Store having retail drugs licence for the purpose of sale of drugs and is running store known as Bansal Medical Store, Railway Road, Palwal. On May 1, 1989, Shri M. P. Gupta, District Drugs Inspector raised the premises of the petitioners and took sample of 38 capsules of Oxytetracycline (I.P.) manufactured by Messrs Chemic Cure Pharmaceuticals near Jawala Textile Mills, Delhi Road, Gurgaon, in September 1988, expiry date of which was September, 1990. The sample of 38 capsules was divided into four portions, three portions being of six capsules each whereas the fourth portion contained 20 capsules. A portion of sample of 20 capsules of Oxytetracycline was sent to Government Analyst Haryana for analysis. The sample was declared to be not of standard quality by the Government Analyst Haryana.

4. After obtaining the report of the Government Analyst, the Drugs Inspector filed a complaint against the petitioners in the Court of Chief Judicial Magistrate, Faridabad.

5. The learned Chief Judicial Magistrate took cognizance of the complaint and issued process of the Court to the petitioners. The charges were framed by the Chief Judicial Magistrate on the basis of the complaint.

6. Reply to the petition has also been filed.

7. The main point urged by the learned counsel for the petitioners is that the complaint as well as further proceedings are liable to be quashed on the sole ground that mandatory provisions of Section 25 of the Act have not been complied, with. According to the learned counsel, the petitioners had notified in writing to the Drugs Inspector with the request to send the sample for testing to the Central Drugs Laboratory as stipulated in Section 25 of the Act. They had doubted the correctness of the report of the Government Analyst and intended to adduce evidence in contravention of the same by getting it tested from the Central Drugs Laboratory. A copy of the letter, dated June 13, 1989 sent by the petitioners to the Drugs Inspector has been attached as Annexure P3 with this petition.

8. The learned counsel for the petitioners further submits that in spite of the letter of the petitioners, the Drugs Inspector did not send the sample for testing to the Central Drugs Laboratory and his action, thus, amounts to non-compliance of the mandatory provisions of Section 25(3) of the Act. The learned counsel, thus, states that the petitioners have been deprived of their right of getting the sample tested from the Central Drugs Laboratory, which right was given to them by Section 25 of the Act. When the sample was sent to the Central Drugs Laboratory, it had already expired. Annexure R/1 filed with the reply itself shows that the sample was received in the Central Drugs Laboratory on December 10, 1990 and the report of the Central Drugs Laboratory is dated May 9, 1991. In this view of the matter, the petitioners urged that when they had intimated to the Drugs Inspector in time to send the sample to the Central Drugs Laboratory, it was not so sent by him. The petitioners had discharged their duty but the respondents did not. For convenience sake, relevant portion of Section 25 is reproduced as under :

"25 (1) to (2) xxx xxx xxx

(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 u/s 18A) 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."

9. Sub-section (3) of Section 25 specifically states that 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 u/s 18A) has within twenty eight days of the receipt of a copy of the report, notified in writing to 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. In the case in hand, the petitioners had intimated to the Inspector concerned within twenty eight days of the receipt of the copy of the report that they wanted their sample to be tested by the Central Drugs Laboratory, which is clear from Annexure P3 attached with the petition. The Drugs Inspector was informed by the petitioners vide letter, dated June 13, 1989 Annexure P3 in which a request was made to send the sample to the Central Drugs Laboratory. It may be noted that at that time even the Court had not taken the cognizance of the offence. So, it was the duty of the Inspector to forward the sample to the Central Drugs Laboratory before the expiry of the same.

10. The learned counsel for the State has not been able to point out anything to show that the mandatory provisions of Section 25(3) of the Act were complied with.

11. To substantiate his argument, the learned counsel for the petitioners has cited *Devinder Kumar Jain v. The Drugs Inspector, Hoshiarpur* (1993) 3 RCR 346 (Punj & Har). In that case also, the provisions of Section 25(3) of the Act were not complied with.

12. In view of my discussion above, I find force in the argument of the learned counsel for the petitioners that the petitioners had informed the Drugs Inspector in time for sending their sample to get it tested from the Central Drugs Laboratory but it was the fault of the Inspector that the sample could not be sent to the Central Drugs Laboratory in time and it was sent only after its expiry date. The petitioners obviously have been deprived of their right given to them u/s 25(3) of the Act.

13. In this view of the matter, the petition is allowed. The complaint as well as

other proceedings taken in pursuance thereof including the charge against the petitioners, is quashed.