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**(1996) 10 P&H CK 0081**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 993-M of 1992**

S.K.Kapur

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision : 17-10-1996**

**Acts Referred:**

**Citation : (1997) 2 RCR(Criminal) 124**

**Hon'ble Judges : K.S.Kumaran, J**

**Advocate : J.C. Nagpal, Rajesh Girdhar, Atul Lakhanpal, Advocates for appearing Parties**

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## **Judgement**

K.S. Kumaran, J.

1. Second appellant Surinder Saini filed a complaint before the Chief Judicial Magistrate, Karnal, under Section 32 of Drugs and Cosmetics Act 1940 against the petitioner herein alleging as follows :

2. Complainant purchased an ampoule of injection Deca Somaboline .25 manufactured by the petitioner bearing the manufacturing date as June 1985 and expiry date as August, 1988 from Jagdamba Medical Hall, Karnal, vide cash memo No. 24493 dated 4.5.1988 for his own use as prescribed by the Doctor. Before using the drug the complainant doubted it to be adulterated drug/substandard drug as he found it contained some pieces of body of some small insect. In complainant wrote a letter dated 9.5.1988 to the petitioner. The complainant got the drug analysed from the Government Analyst Haryana State Laboratory, Chandigarh. The report of the Government Analyst dated 21.7.1988 reveals that the drug is not of standard quality as defined in the Drugs and Cosmetics Act 1940 and the rules thereunder since the sample contained four pieces of body of some insect, like legs etc. such a drug cannot be used on a human being. The complainant sent a registered notice to the petitioner through counsel and informed about the report of the Govt. Analyst but the petitioner did not reply. The petitioner accused has contravened the provision of Section 18(a) (i) read with Section 16 of the Act.

2. The learned Chief Judicial Magistrate, on the basis of the preliminary evidence held that there were prima facie grounds for summoning the petitioneraccused under section 18(1)(i) of the Drugs and Cosmetics Act, 1940 punishable under Section 27(b)(i) of the Act and ordered the petitioner to be summoned for 7.2.1989.

3. The petitioneraccused has approached this Court under Section 482 of the Code of Criminal Procedure for quashing the complaint (case No 3/3 of 1988) on the file of Chief Judicial Magistrate, summoning order of the Chief Judicial Magistrate, dated 20.12.1988 and the further proceedings taken thereon. According to the petitioneraccused, the complainant has not complied with the mandatory provisions since the complainant has not intimated in form 17 to the person from whom he took sample nor has taken four samples as provided under the Act nor did he seal the sample with his own seal and the seal of the seller as provided, nor did he send the sample forthwith to the Government Analyst, but kept it with him for over two months before sending the sample to the Government Analyst. The report of the Government Analyst (Annexure P3) is, in fact, no report in the eyes of law and no prosecution can be launched thereon. Even after the report of the Government Analyst, mandatory provisions of Section 25 of the Act have not been complied with which inter alia provide for sending a copy of the report of the manufacturer, which has not been done. The complainant by obtaining one ampoule of injection and sending it to the Government Analyst, has destroyed the entire defence that would have been available to the manufacturer. The sample has been sent for analysis on 21.7.1988, that is, after the expiry date. The identity of the sample is not established from the complaint and the Government Analyst's report.

4. The District Drug Inspector filed the following reply on behalf of the first respondent :

5. The second respondent has to follow the procedure as prescribed. Form 17 is only applicable where the sample is taken by the Inspector. Form 14A and Form 14B of the Drugs and Cosmetics Rules, 1945 are applicable to the present case. The report of the Government Analyst is in accordance with the provisions of the Act and Rules. Section 25 of the Act is not applicable to the present case and the Government Analyst was not duty bound to send a report to the petitioner.

6. The second respondent filed a reply alleging as follows :

7. No intimation was required to be given in form 17. Sample was not required to be sealed because it was produced before the Government Analyst in its original condition. The requirement of sealing is not prescribed in the case of persons from public. This respondent took the matter with the Chief Medical Officer, Karnal, vide letter annexure R2 dated 20.6.1988 who advised the petitioner to approach the Government Analyst. Identity of the sample cannot be disputed by the petitioner company as the drug in question was a glass amopule and was handed over in its original shape to the Government analyst. Under Section 26 of

the Act any person is entitled to submit any drug or cosmetic for analysis to a Government Analyst and to receive a report. Section 32 of the Act enables an aggrieved person to launch the prosecution. Section 25 of the Act is not applicable to the case on hand but applies to the Inspector named/appointed under the Act.

8. I have heard the counsel for the parties. Though the petitioner has raised several contentions, at the time of the arguments, he confined his arguments to the question whether further proceedings can be allowed to continue in view of the fact that the right vested in him under Section 25 of the Act to have the sample tested or analysed in the Central Drugs Laboratory has been deprived because of the fact that the summoning order itself has been issued after the date of expiry of the life of the drug in question.

9. Learned counsel for the petitioner contends that even as per the allegations in the complaint, the month of manufacture was June, 1985, the date of expiry was August, 1988 invalid, whereas the sample was sent for analysis on 21.7.1988, report received on the same day, complaint filed on 19.8.1988, and the summoning order passed on 20.12.1988 directing the petitioner to appear on 7.2.1989. The learned counsel for the petitioner contends that under subsection (4) of Section 25, the petitioner has got the right to have the sample tested by the Central Drugs Laboratory which right has now been deprived in view of the fact that the life of drug had expired on the date of summons order was issued, i.e. on 20.12.88. The learned counsel for the respondents, on the other hand, contends that the provisions of Section 25 are not applicable to the facts of this case inasmuch as under Section 26, any person is entitled to have a drug analysed by the Govt. Analyst, and is also entitled to institute a complaint before the Judicial Magistrate Ist Class under Section 32 of the Act. According to the respondents, it is only when the Drug Inspector files the complaint, the provisions of Section 25(4) of the Act will apply and not when the complaint is given by a person aggrieved. But the provisions of section 25(4) do not make any distinction between a complaint filed by the Inspector and an individual. Section 25 of the Drugs and Cosmetics Act reads as follows :

"25(1) The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under subsection (4) or 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 18A, 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 18A, has within twentyeight 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 controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under subsection (3) notified his intention of adducing evidence in controversion 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 subsection (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 subsection (4) shall be paid by the complainant or accused as the Court shall direct."

Of course, subsection (4) provides that a person like the petitioner should have notified his intention of adducing evidence in controversion of the Govt. Analyst's report as contemplated under subsection (3) in order that he may request for reanalysis by the Central Drugs Laboratory. But before he could express such an intention he should have been furnished with a copy of the report in view of the provisions contained under subsection (2). In this case, the specific allegation of the petitioner is that he was not furnished with a copy of the report of the Analyst. It is not stated by the respondents that a copy of the report was sent to the petitioner but the contention of the respondents is that Section 25 of the Act has got no application to the facts of this case where the complaint has been given by an individual, like the second respondent but the said section applies only to a complaint by the Inspector. But, as pointed out already, Section 25 does not make any distinction between a complaint made by an individual and the Inspector. Once the Govt. Analyst analyses, he has to deliver to the Inspector the report who, in turn, has to deliver a copy of the report to the person from whom the sample was taken or to the manufacturer. If such a report is given to the manufacturer, like the petitioner, then he will have to express his intention to controvert the same within the time specified under sub section (3) of Section 25. If the sample had not already been tested or analysed by the Central Drugs Laboratory, the manufacturer, like the petitioner, is entitled to have it tested through Court under subsection (4) of Section 25. In Form 14A (Annexure R2/4), the 2nd respondent had not disclosed the name of the manufacturer, i.e., the petitioner. But as pointed out already, the summoning order itself was passed on 20.12.1988 whereas the life of the drug had expired long before that. Thereafter,

the petitioner has been deprived of an opportunity of having the drug reanalysed in the Central Drugs Laboratory. This is a right vested in him under subsection (4) of Section 25 and the deprivation of such a valuable right certainly prejudices the petitioner. The contention that Section 25 of the Act does not apply to the case where the complaint was given by a private individual cannot be accepted in view of what I have stated above.

10. Therefore, the complaint, the summoning order and the further proceedings emanating therefrom have to be quashed.

11. A faint attempt was made by the respondent to contend that the petitioner had filed a revision before the Addl. Sessions Judge, Karnal and the same has been dismissed and, therefore, these proceedings under Section 482, Cr.P.C. are not competent. A copy of the judgment of the learned Addl. Sessions Judge Karnal in Cr. Rev. 6/1989 dated 9.7.1990 has been produced as Annexure R5. But a perusal of the same shows that the revision was directed against the order passed by the Chief Judicial Magistrate, Karnal whereby he ordered the personal appearance of the Managing Director of the petitioner company inasmuch as the Area Manager alone had appeared in Court. Objection was taken by the 2nd respondent herein that the Managing Director of the petitioner company should have appeared in Court as he was responsible for the conduct of the business and not the Area Manager. The learned Chief Judicial Magistrate accepted the contention of the 2nd respondent/complainant and directed that the Managing Director should appear. It is against that order that the said revision petition was filed but was dismissed. Therefore, the point that has been urged now in these proceedings was not the subjectmatter in the revision petition and, therefore, the dismissal of the revision petition cannot affect the right of the petitioner to approach this court under Section 482, Cr.P.C.

12. Therefore, in view of my finding above, the complaint, the summoning order and the other proceedings emanating therefrom and impugned in this petition are quashed and the petition is allowed accordingly.