(2008) 08 PAT CK 0027

In the Patna High Court

Case No : Criminal Miscellaneous No. 34874 of 2003

Sulochna Devi — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:
Drugs and Cosmetics Act, 1940 — Section 18(a)(1), 23(4), 25(2), 25(4), 27

Citation : (2009) 2 PLJR 995

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : N.K. Agrawal and Anurag K. Shukla, for the Appellant; Md. Mustaque Alam for the State and O.P. No. 2 and Mr. Amitesh Kumar for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner through this application seeks the quashing of the entire criminal proceeding arising out of Complaint Case No. 2-C4 of 2003 including the order dated 7.6.2003 passed therein by the learned Chief Judicial Magistrate, Munger, whereby he has taken cognizance of offence u/s 27(a) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act). The Drug Inspector, Munger, impleaded herein as O.P. No. 2 filed the aforesaid prosecution report alleging that on 24.8.2000 an inspection of the Drugs Store of Munger Sadar Hospital was carried out in the presence of Regional Licensing Authority and other officials, in course whereof samples of four drugs were collected and sent to the Government Analyser at Ghaziabad in UP. The sample of Doxycycline Cap. I.P. (100 mg) Batch No. 22 Mfg. date-January, 2000, Expiry date-December, 2001, manufactured by M/s Pravin Pharma, Mumbai, was found to be below standard. It was further alleged that an opportunity was given to M/s Pravin Pharma to explain the circumstances vide letter dated 21.6.2001 to which a reminder was sent through letter dated 18.7.2001. Eventually an explanation was submitted by M/s Pravin Pharma after withdrawing the medicines from the

market. It was also alleged that the sale of the aforesaid medicines was made by M/s Mount Pharma, Tripolia Gate, Patna-7 to the Superintendent, Sadar Hospital, Munger. The Drug Controller, Bihar at Patna was appraised by letter dated 6.8.2001 of the situation and permission was sought for prosecution of the accused institution. It was alleged that M/s Pravin Pharma had manufactured and sold drugs which were not of standard quality and was in violation of Section 18(a)(1) of the Act and was punishable u/s 27 of the Act and M/s Mount Pharma by selling the below standard medicines had contravened the provisions of Section 18(a)(1) of the Act and liable to punishment u/s 27 of the Act.

2. It has been submitted on behalf of the petitioner that the Drug Inspector had sought permission from the Drug Controller. Bihar, for initiating prosecution against the manufacturer only but the permission letter annexed to the prosecution report clearly shows that permission was accorded on the basis of letter dated 3.9.2001 issued by the Regional Licensing Authority, Munger, whereas by the said letter permission was sought to prosecute M/s Pravin Pharma only and this only goes to show that the petitioner had been dragged in the present case by the local officials with an ulterior motive.

3. It is further submitted that the petitioner had purchased the drugs in question from the manufacturer vide Invoice No. 1008 and then she sold it to the hospital in factory packed conditions and as such she cannot be fastened with any responsibility with respect to the quality or standard of the drug. That apart the consignment of drugs in question received by the petitioner on 8.2.2000 and was sold to the Superintendent, Sadar Hospital, Munger in packed condition on 24.2.2000. This would go to show that the drugs in question remained in the stock of the petitioner for only 16 days and as such there was no occasion for the petitioner to know about the quality of the drug. In this connection the explanation submitted by the manufacturer was sought to be brought to my notice where it was submitted that the quality of the drugs may have deteriorated due to improper storage by the period and storage of drugs at place other than a "cool and dry place" for about 6 months may have been the cause of deterioration of the quality of the drugs.

4. It was next submitted that the sample of the concerned drug was collected from the hospital on 24.8.2000 and the same was not sent for testing till 20.12.2000 and was received in the testing laboratory on 2.1.2001. As such the sample had remained in the custody of the prosecuting agency for about 4 months under undisclosed conditions in all for about 10 months after it was sold to the Superintendent and any lapses on the part of the authorities in keeping the sample of drug at a place other than "cool and dry place" is sure to deteriorate quality of drug in question. On this premise it was sought to be submitted that it would be apparent that the petitioner had not committed any offence and she was unnecessarily harassed and prosecuted for the acts of others, primarily the hospital and the prosecuting agency who are beyond the control of the petitioner. It was finally submitted that no opportunity, was given

to the petitioner of submitting her explanation before initiating the instant prosecution whereas such an opportunity given to the manufacturer which would be apparent from the prosecution report itself. As a matter of fact even an intimation that the drug in question had been found to be substandard was not given to the petitioner either by prosecuting agency or by the manufacturer. On this premise it was submitted that the statutory right of the petitioner under Sections 25(2) and 25(4) of the Act to receive a copy of the report of the analyst and to get the sample tested on his own and therefore no prosecution could be launched against the petitioner. In support of his submission reliance was sought to be placed on the decision of the State of Haryana Vs. Unique Farmaid P. Ltd. Ors., .

5. A joint counter affidavit has been filed by the State and the Drug Inspector wherein they have sought to defend their action by referring to Section 27(a) of the Act which states whosoever himself or by any other person on his behalf manufacturers for sale or for distribution or sells or stocks or exhibits or offers for sale or distribution drugs not of standard quality shall be punishable and as the petitioner was a supplier of substandard medicines it was an offence u/s 27(A) of the Act. They have denied the fact that the medicine and the sample had been kept in substandard storage conditions in the hospital as also in the office of the Drug Inspector, Munger. They have also stated that the sample was sent for analysis before the expiry date of the drug and the analysis was also done prior to the date of expiry. They have also denied the violation of Section 23(4) of the Act inasmuch as one seized portion of the medicines concerned had been sent to M/s Pravin Pharma, the manufacturer of the drug.

6. The manufacturer M/s Pravin Pharma have also appeared and filed counter affidavit wherein they have sought to support the case of the petitioner of their having received the consignment containing the drug on 8.2.2000 and selling the same to the Superintendent on 24.2.2000 and that it had remained with the retailer for only 16 days. They have also sought to raise question regarding the storage conditions both in the hospital as also in the office of the Drug Inspector where the medicines had been stored and of the possibility of the medicines having been lost its originality due to improper storage conditions.

7. From the submissions advanced by the respective parties a few things are highlighted which requires serious consideration. Firstly, that the petitioner was never given an opportunity to explain her stand before initiation of the proceeding as has been given to the manufacturer, secondly, the sanction for prosecution had been obtained from the Drug Controller only with respect to the petitioner who was the mere retailer. Thirdly, there is no explanation for the delay of four months in sending the sample for analysis and fourthly the storage conditions in the hospital as also the office of the Drug Controller has not been stated and finally no report of the analysis was supplied to the petitioner. Since there are no satisfactory answers by the State and the Drug Inspector to all these questions raised apparently the complaint case as also the cognizance

appears to be an abuse of the process of the Court and has to be quashed. Accordingly, the impugned order taking cognizance as also the criminal proceeding, so far as the petitioner is concerned, is hereby quashed and the application is allowed.

