
(2002) 05 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Crl.Misc. No. 2205-M of 1995

Sunil Chaudhary and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Citation : (2003) 1 AICLR 459 : (2002) 4 RCR(Criminal) 715

Hon'ble Judges : Ashutosh Mohunta, J

Advocate : Mr. Baldev Singh, Senior Advocate (Mr. Sudhir Sharma, Advocate.None for Respondent, Advocates for appearing Parties

Judgement

Ashutosh Mohunta, J.

1. The present petition under Section 482, Code of Criminal Procedure, has been filed for quashing the order dated January 5, 1994 (Annexure P2) passed by the Chief Judicial Magistrate, Faridkot, vide which the petitioners have been summoned for facing the charges punishable under Section 18(1)(i) read with clauses (b), (c) and (d) of Section 27 of the Drugs and Cosmetics Act, 1940 (for short `the Act").

2. The Drugs Inspector took sample of chloramphenicol IP capsules manufactured by Havell Pharmaceuticals, Bahadurgarh from the shop of M/s Kohli Medical Hall, Faridkot, owned by Jaswinder Singh. The sample was found to be of substandard quality. A complaint was filed in the Court of Chief Judicial Magistrate, Faridkot, on September 21, 1989 against Sham Kumar, proprietor of M/s Prince Medicos, Shop No. 15, Gandhi Market, Bathinda. Sham Kumar accused moved an application for impleading M/s Havell Pharmaceuticals, Delhi, as the accused. The application was dismissed on February 21, 1991. Sham Kumar moved another application for impleading Jaswinder Singh, Proprietor of M/s Kohli Medical Hall, Faridkot and also impleading the petitioners, who are partners of M/s Havell Pharmaceuticals, Bahadurgarh, the manufacturer of drugs in question. The Chief Judicial Magistrate vide the impugned order dated January 5, 1994, summoned the petitioners to stand trial, while he declined to summon

Jaswinder Singh. The petitioners have challenged the order passed by the Chief Judicial Magistrate, summoning them as accused, by filing the present petition.

3. Learned counsel appearing for the petitioners has contended that there is an unreasonable delay in summoning the petitioners as accused. According to him, the offence is alleged to have been committed on January 29, 1986, when the Government Analyst has found the sample in question to be of substandard quality. The petitioners could be best be summoned upto January 29, 1989, i.e., within a period of three years. But in the present case, the complaint has been filed on September 29, 1989, and the petitioners have been summoned vide order dated January 5, 1994, i.e., much after the period of limitation. Further it has been contended that the Drugs Inspector, after conducting thorough inquiry found that no offence had been committed by the petitioners and they had not been arrayed as accused in the complaint filed by the Drugs Inspector. Thus, the impleadment of the petitioners at a later stage at the instance of Sham Kumar accused is bad and wrong under the facts and circumstances of the case. Still further it has been contended by the learned counsel for the petitioners that the sample of chloramphenicol capsules 250 mg of the same batch No. 39 and manufactured by M/s Havell Pharmaceuticals, Bahadurgarh, has already been declared as of standard quality by the test carried out by the Central Drugs Laboratory. A photo copy of the said report is on record as Exhibit XIXA. The further contention of the learned counsel for the petitioners is that no copy of the report of the Analyst, which is mandatory to be supplied to the accused under Section 25 of the Act, has been supplied to the petitioners. Further no sample portion, as is mandatory under the provisions of Section 23 of the Act, has also been supplied to them.

4. After hearing the learned counsel for the petitioners, I find that there is an unreasonable delay in summoning the petitioners. The petitioners at best could have been summoned within a period of three years from the date of commission of the offence by them. In the present case, the report of the Government Analyst is dated January 29, 1986. The petitioners could at best be summoned by January 29, 1989. Instead they have been summoned vide order dated January 5, 1994. Thus, there is an unreasonable delay in summoning the accused.

5. Further, the mandatory provisions of the Act have not been complied with. The petitioners have not been supplied with the copy of the Analyst report. They have also not been supplied a sample portion, which was alleged to have been found to be of substandard quality. Thus, they have been deprived of their valuable right in getting the sample analysed. At the time when they have been summoned as accused, the life of the sample had already been expired.

6. Furthermore, the petitioners have been summoned merely on the basis of suspicion. The petitioners had not been found to be guilty by the Drugs Inspector. Rather, they have been arrayed as accused merely on an application made by Sham Kumar accused. The earlier application filed by him had been

dismissed by the Chief Judicial Magistrate. On the second application filed by him, the petitioners have been summoned. It has been held by their Lordships of the Supreme Court in the case reported as Michael Machado & Anr. v. Central Bureau of Investigation & Anr., 2000(2) RCR(CrL.) 75 (SC) : 2000(2) Crimes 23 (SC) , that the Court must have reasonably satisfied from the evidence already collected that the other person committed the offence and could well be tried along with already arraigned person. Mere doubt about involvement of other person in the offence is not sufficient. I do not find that there was any prima facie evidence against the petitioners for summoning them in the present case.

7. In the light of the above discussion, I allow the petition and quash the summoning order dated January 5, 1994 passed by the Chief Judicial Magistrate, Faridkot.