(1997) 05 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1566-M of 1996

Vijay Kumar — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 22-05-1997

Acts Referred:

Citation : (1997) 3 RCR(Criminal) 642

Hon'ble Judges : Sarojnei Saksena, J

Advocate : Jaidip Duhan, Heman Aggarwal, Advocates for appearing Parties

Judgement

Dr. (Mrs.) Sarojnei Saksena, J.

1. The petitioners are seeking quashment of complaint Annexure P1 filed under sections 18(1)(i) read with section 27(b)(i), 27(c) and 27(d) of the Drugs and Cosmetics Act, 1940 (in short, the ''Act'').

2. The brief facts of the case are that complainant is a duly appointed Drug Inspector under the Act. Petitioners (accused No. 1) are drug manufacturers. M/s Soni Medical Agencies, Ladwa, is a wholesale drug licensee firm. On July 9, 1993, Shri Ashok Bhamba, the then Drug Inspector, inspected the premises of M/s Soni Medical Agencies and a sample No. AKB48/93 of Chloroamphenicol Capsule I.P. Batch No. GC50, Ex. P. Nov. 94 manufactured by the petitionersaccused No. 1 was taken for analysis. As per the procedure laid down in the Act, it was divided into four portions. One portion of the sample was given to the partner of Messrs Soni Medical Agencies, from whom the sample was taken. Another portion of the sample was sent to the Government Analyst Haryana. On analysis the sample was declared not of standard quality vide test report dated August 31, 1993.

3. Notice dated September 27, 1993, was served on M/s Soni Medical Agencies, Ladwa. Their reply dated July, 8, 1993, was received, wherein it was disclosed that they purchased the said drug from M/s Vinay Medicine Traders, Khan Market, Saharanpur.

4. M/s Vinay Medicine Traders, Saharanpur, is a wholesale drug licensed firm. Notice dated October 7, 1993, was sent to them. They disclosed that they have purchased this drug from M/s Dass Medical Store, Meerut, vide their bill No. 25927 dated May 2, 1993.

5. M/s Dass Medical Store, Meerut, is a wholesale drug licensed firm and stockist of accused No. 1petitioner as disclosed from the copy of bill No. 25927 dated May 2, 1993.

6. M/s Dass Medical Store, Meerut, was served with a notice dated November 10, 1993, to disclose the particulars of purchase of the said drug. Reminders were sent on December 3, 1993, April 15, 1994 and May 21, 1994, but no reply was received. Registered notices dated July 14, 1994 and August 6, 1994, were also sent to them, but no reply was received. Failing to receive any reply accused No. 1petitioners were served with a notice dated September 6, 1994, under the Act for having manufactured the said drug for sale and distribution through M/s Dass Medical Store, Meerut also. For further investigation and also for delivery of sample along with a further copy of the test report, the Drug Inspector informed the petitioners about his visit fixed on October 11, 1994, by registered letter dated September 29, 1994. As no reply was received, next date was fixed for October 20, 1994.

7. On October 6, 1994, the complainant received a letter from the petitionersaccused No. 1 dated September 25, 1994. On October 20, 1994, two Drug Inspectors went to Meerut. They along with Drug Inspector of Meerut tried to contact the petitioners but the premises were found closed. On October 28, 1994, registered letter along with sealed sample portion was sent to the petitioners but no reply was received. The reminder dated 15.11.1994 also met the same fate. Reminder was sent to the Drug Inspector, Meerut, also on 25.10.1994 but no reply was received. On 17.11.1994 a telegram was sent to the petitioners to send the sample to Central Drug Laboratory, Calcutta, in their presence through the Court at the earliest, and copy of the telegram with a detailed note was also sent to the petitioners. On 16.11.1994 the complainant received a letter from the petitioners. Thus, M/s Glamour Laboratories and M/s Dass Medical Store did not cooperate in the proceedings. The complainant concluded that accused Nos. 1 and 2 have manufactured, sold, stocked and distributed spurious, adulterated, substandard and misbranded drug as defined under sections 17B, 17A, 16 and 17 and thus have contravened section 18(a)(i) which is punishable under section 27(b)(i), 27(c) and 27(d) of the Act.

8. The petitioners, being manufacturers of the said drug, are seeking quashment of this complaint on the ground that a false complaint has been lodged against them in the Court of the Chief Judicial Magistrate, Kurukshetra, on November 24, 1994. It is averred that there is not even an iota of proof that the alleged medicine was either manufactured or sold by the petitionerfirm. The petitioner has been deprived of his right as provided under subsection (4) of section 25 of the Act. The complaint was filed on November 24, 1994. The date of expiry of

the medicine was November 30, 1994. Hence quashment is prayed.

9. The Drug Inspector has filed reply and has reiterated the facts enumerated in the complaint. In para 4 of the reply it is alleged that every possible effort was made by the respondents to ensure compliance of section 25 of the Act and the Rules. When the petitioners challenged the analyst''s report vide letter dated November 10, 1994, received by the respondents on November 16, 1994, the respondents immediately called the petitioners through telegram dated November 17, 1994, for sending the sample to the Central Drug Laboratory in their presence through the Chief Judicial Magistrate, Kurukshetra, but the petitioners never attended the office of the respondents for the said purpose. It is not known to the respondents whether the petitioners had gone to the Court of the Chief Judicial Magistrate for that purpose. It also averred in the reply that the third sample along with copy of analyst''s report was sent to the petitioners on October 25, 1994, but they failed to exercise the option available to them under Section 25 of the Act. Hence on that ground, the complaint cannot be quashed.

10. In this case the only ground on which quashment is sought is that the petitioners have been deprived of their valuable legal right under section 25(4) of the Act, as the complaint was lodged on November 24, 1994, while the expiry date of the said drug was November 30, 1994. The petitioners have also appended copy of letter Annexure P9 dated November 10, 1994, wherein they have mentioned that they are challenging the report of the Analyst; they complained that the copy of the report is not understandable; hence request was made that second legible copy (duly attested) of the said report be sent to them. In the reply the respondents have admitted the receipt of this letter dated November 10, 1994. The respondents have mentioned that immediately thereafter they sent telegram on November 17, 1994, to the petitioners for sending the sample to the Central Drug Laboratory in their presence through the Chief Judicial Magistrate, Kurukshetra, but the petitioners never attended the office of the respondents.

11. Admittedly, in this case the sample of the said drug was taken on July, 9, 1993. Report of the Government Analyst, Haryana, is dated August 31, 1993. Its copy was sent to the petitioners on September 6, 1994. Complaint was filed on November 24, 1994, and the expiry of the said drug is November 30, 1994.

12. Under Section 23 of the Act the procedure of inspection is laid down. Subsection (3) thereof provides that when the Drug Inspector takes a sample of a drug or cosmetic, he is required to divide the sample into four portions. One is to be given to the person from whom the sample of drug or cosmetic is taken. If the sample is taken from the premises of the manufacturers, the sample is required to be divided into three portions only. One portion of the sample is to be given to the person from whom it is taken and three portions are required to be retained by the Drug Inspector. Out of them he is required to send one to the Analyst for analysis; the second he shall produce in the Court; the third, shall be sent to the manufacturer, whose name is disclosed under section 18A. Section 24

of the Act makes it obligatory for the person incharge of any premises, whereon any drug or cosmetic is being manufactured or is kept for sale or distribution, to disclose to the Drug Inspector the place where the drug or cosmetic is being manufactured or kept, as the case may be.

13. Section 25 of the Act provides that the Government Analyst after analysis of the drug or cosmetic shall deliver to the Inspector his report in triplicate in the prescribed form. Its subsection (2) provides that the Inspector on receipt of the said report shall deliver one copy of the report to the person from whom the sample was taken, 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 to be produced in the Court. Its subsection (3) lays down that the report of the Government Analyst shall be evidence of the facts stated therein, which shall be conclusive evidence, unless the person from whom the sample was taken or the person, whose name, address or 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. Its subsection (4) is reproduced below :

"(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."

14. Thus, it is obvious that under this section, two options are open to the accused. The accused is entitled to have one portion of the sample entrusted to him to have it notified to the Court for proving to be contrary to the conclusive evidence of the report of the analysis; after such a notification having been given to the Court, he is entitled to have it tested by the Central Drugs Laboratory and adduce evidence of the report so given. The other option is, after the complaint is laid in the Court, the portion of the sample that is lodged with the Court by the Drug Inspector, would be requested to be sent by the Court to the Central Drug Laboratory and the report of the Director of Central Drug Laboratory shall be conclusive evidence as to the quality, content and facts stated therein.

15. In this case the complainantDrug Inspector made all possible efforts to contact the petitioners during investigation and to inform them that the drug manufactured by them has been found adulterated, spurious, but at that stage they did not cooperate. Thereafter a copy of the analyst''s report along with a portion of the sample was duly sent by the complainant to the petitioners well in

time. After receiving the petitioner''s letter Annexure P9 dated November 10, 1994, which was received by the complainant on November 16, 1994, he immediately sent a telegram to the petitioners to send the portion of the sample lying with them to the Central Drug Laboratory if they want to have reanalysis of the said sample, but despite that the petitioners did nothing and as the expiry date was approaching, the complainant laid the complaint on November 24, 1994. Thus, if the complaint is lodged late and now the aforementioned second option is not available to the petitioners, they cannot seek quashment of this complaint on that ground.

16. The other facts stated above and disputed by the petitioners are questions of fact, which cannot be gone into in this quashment proceeding.

17. If during trial the Magistrate comes to the conclusion that without any fault of the petitioners, they have been deprived of their legal right of reanalysis of the said portion of the sample under section 25(3/4) of the Act, the Magistrate is competent to give a finding to that effect. Hence, in my considered view, there is no ground to quash the complaint at this initial stage.

18. Resultantly, the petition under consideration, is hereby dismissed.

