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HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No.402/2013

Reserved on: 27.02.2026
Pronounced on: 09 .03.2026
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August Remedies Village-Ogli, Nahan Road, Kala Amb,
Distt. Sirmor-1730033 (H.P.) India through its Parnter
Sh. Sanjay Taneja, Age 45 years S/o sh. M.L.Taneja.

...Petitioners(s)

Through:-
Mr. Sachin Gupta, Advocate.

Versus

1. State of Jammu and Kashmir, Through Deputy Controller,
C/o Office of Drugs & Food Control Organization Muthi,
Jammu.
2. Drug Inspector, Jammu (Zone-V),
Sh.Gagan Bhardwaj,
C/o Office of Drugs & Food Control Organization, Muthi,
Jammu

….Respondents

3. Surjit Singh
S/o Shukar Singh
C/o M/s Shiv Shakti Medicos,
Sure Chak, Phallan Mandal, Jammu.

4. Koushal Jain (Competent Person)
C/o M/s J.K.Pharma,
Shalimar Road, Jammu.
5. Pankaj Pharma,
C/o B-11, First Floor, Commercial Complex,
Dr. Mukherjee Nagar, delhi-110009
Through its Proprietor/Partner

6. Amro Pharma,
C/o 105-A, 29/30, Jaina House,

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Commercial Complex, Dr. Mukherjee Nagar,
Delhi-110009
Through its Proprietor/Partner

...Proforma-Respondent(s)

Through:- Mr. Raman Sharma, AAG with
Ms. Jagmeet Kour, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner invokes inherent criminal jurisdiction vested in this Court under Section 561-A of the Code of Criminal Procedure, 1898, which was then in force and now repealed, and seeks to challenge proceedings in complaint titled State through Drug Inspector v. Surjit Singh and others, pending trial before the learned Chief Judicial Magistrate, Jammu ["the trial Court"].

2. Before we advert to the grounds of challenge urged by Mr. Sachin Gupta, learned counsel appearing for the petitioner, we deem it appropriate to notice, briefly, few facts, as are germane to the disposal of this petition. The respondent No.2, in his capacity as Drug Inspector appointed under Drugs and Cosmetics Act, 1940 ["the Act"] and duly empowered by the Government in terms of SRO 288 dated 28.07.1989, lifted samples of Drug "Tab CEFAM-250" (Batch No.349, Mfd date-09/2009, Exp. Date-08/11, on 22.02.2010 from the premises of M/s Shiv Shakti Medicos, situated at Sure Chak, Phallan Mandal, Jammu.

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3. The sample was picked up during random/routine inspection carried out by respondent No.2. The drug was found to have been manufactured by the petitioner-August Remedies, Ogli Nahan Road, Kala Amb-173033 (Himachal Pradesh). He filled up Form No.17 on spot and intimated to M/s Shiv Shakti Medicos about its intention of lifting sample for the purposes of test and analysis from the government analyst i.e. CDFL, Jammu. Respondent No.2 divided the lifted sample of the drug in question into four portions and sealed them as per the procedure under the Act. All the four portions were sealed in the presence of proprietor of M/s Shiv Shakti Medicos, accused No.1 in the complaint. Copy of Form No.17 along with one sealed portion of the sample of the drug in question was handed over to accused No.1 in the complaint against proper receipt. Price of the drugs lifted was also tendered to the accused No.1. One portion of the sample of the lifted drug in question was sent to the government analyst for examination and analysis by respondent No.2. The government analyst sent his report dated 19.07.2010 to respondent No.2 and, as per the report, the sample portion of the drug in question, which was subjected to analysis and examination, was declared not to be of standard quality as defined in the Act. The report further declared the sample portion of the drug having failed in assay of Cefuroxime. Accordingly, respondent No.2 informed accused No.1, from whom sample was lifted, about the report of the government

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analyst and also provided him a copy thereof. He was also asked to stop sale of the drug in question as also to disclose the name of persons/Company from whom he had purchased such drug. Accused No.1 disclosed that he had purchased the drug in question from respondent No.2 i.e. M/s J.K.Pharma, who, in turn, informed that he had purchased it from accused No.3 i.e. Pankaj Pharma, Delhi. Both, J.K. Pharma and Pankaj Pharma, accused No.2 and 3 were also given notice along with report of government analyst, as warranted by law. They were also asked to stop the sale of drug in question.

4. Accused No.3, M/s Pankaj Pharma, Delhi informed respondent No.2 that he had purchased the drug in question from the distributor i.e. accused No.4-Amro Pharma, Delhi. Resultantly, respondent No.2 issued notice under Section 18-A of the Act to M/s Amro Pharma Delhi and also informed it about the report of the government analyst by providing him copy of the said report as warranted under law. On receipt of particulars of manufacturer from the accused No.4 in the complaint, respondent No.2 issued notice dated 28.08.2010 to the petitioner-manufacturing company through registered post and informed it about the test report of the drug in question manufactured by it.

5. Petitioner herein being the manufacturing company of the drug in question was directed to immediately furnish sale and stock record of the drug in question with a further direction to recall

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the drug from the market and to furnish list of the dealers to whom the drug in question had been supplied. Consequently, respondent No.1, after seeking sanction from the competent authority, filed the complaint before the trial Court.

6. All the accused including the petitioners were summoned. The petitioner herein appeared in the trial Court pursuant to the summons issued on 10.07.2012 and by that time the shelf life period of drug in question already stood expired w.e.f. August, 2011.

7. Feeling aggrieved, the petitioner first challenged the proceedings on the complaint filed by respondent No.2, by filing a criminal revision before the 2nd Additional Sessions Judge, Jammu, which revision petition came to be dismissed by the Revisional Court vide its order dated 05.08.2013. This is how the petitioner is before this Court with the same grievance, he had projected before the Revisional Court.

8. Proceedings in the complaint filed by respondent No.2, which is pending trial before the trial Court, are challenged *inter alia* on the following grounds:

   i) That as required by Section 25(3) and Sectio 25(4) of the Act read with Section 23(4)(iii), supply of one portion of the sample of the drug lifted for

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analysis to the Manufacturer, so as to give him an opportunity to controvert the report of the government analyst, is sine qua non for initiating proceedings on a complaint filed for commission of offences under Section 27(d) read with Section 18(a)(i) of the Act.

ii) That the procedure followed by the government analyst has not been carried out as per the standard prescribed test, in that, the drug in question being a United State Pharmacopeia drug ought to have been tested, examined and analyzed according to the guidelines issued by the United State Pharmacopeia.

9. *Per contra*, Mr. Raman Sharma, learned AAG appearing for respondent Nos. 1 and 2, would argue that the issues which are sought to be raised by the petitioner in this petition are essentially mixed questions of fact and law, which are required to be determined by the trial court on the basis of evidence, which may be led by the parties before it and that this Court in the exercise of its inherent criminal jurisdiction would not go into these questions of fact and determine as to whether the prescribed tests were applied by the government analyst while examining and analyzing the drug in question.

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10. With regard to the failure of respondent No.2 to supply portion of the sample to the petitioner, Mr. Raman Sharma would submit that whether or not a portion of the sample lifted drug was supplied to the petitioner is again a question of fact, which would require evidence for determination and such evidence can only be led during trial. He would, therefore, pray for dismissing this petition having raised disputed questions of fact, the determination whereof falls within the domain of the trial Court.

11. Having heard learned counsel for the parties and perused the material on record, it is necessary to first take notice of few salient provisions of the Act, which are relevant in the context of the controversy raised in this petition. The Act, as its preamble reveals, is enacted to regulate import, manufacture, distribution and sale of drugs and cosmetics. The main object of the Act obviously is to prevent sub-standard drugs to be manufactured and sold in the market presumably for maintaining high standards of medical treatment.

12. Chapter-IV of the Act, in particular, deals with manufacture, sale and distribution of drugs and cosmetics. Section 16, which may be relevant for our purposes, is set out below:

> *"16. Standards of quality. —(1) For the purposes of this Chapter, the expression "standard quality" means—*
>
> *(a) in relation to a drug, that the drug complies with the standard set out in the Second Schedule, and*

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> *(b) in relation to a cosmetic, that the cosmetic complies with such standard as may be prescribed.*
>
> *(2) The Central Government, after consultation with the Board and after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend 5[the Second Schedule] for the purposes of this Chapter, and thereupon the Second Schedule shall be deemed to be amended accordingly."*

13. From a plain reading of Section 16, it is evident that a drug would be of standard quality if it complies with standards set out in the Second. The Second Schedule enumerates different classes of drugs and provides for the standards to be complied with. Clause 5(a) of Second Schedule pertains to the drugs included in Indian Pharmacopoeia and prescribed standards to be complied with and such standards are as prescribed in Indian Pharmacopoeia for the time being in force. In respect of the drugs for which standards are not specified in the Indian Pharmacopoeia for the time being in force, the same shall be determined as per the standards, which were prescribed in the Indian Pharmacopoeia immediately preceding the Indian Pharmacopoeia in force. Clause 5(b) of the Second Schedule deals with drugs not included in the Indian Pharmacopoeia but which are included in the official pharmacopoeia of any other Country and it provides that standards of identity, purity and strength of such drugs shall be determined as per the edition of such official pharmacopoeia of any other country etc etc.

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14. Section 23 of the Act deals with procedure to be followed by the Inspectors of Drugs while taking out a sample of drug for the purposes of test or analysis. Section 23 reads thus:-

> "23. Procedure of Inspectors.—(1) Where an Inspector takes any sample of a drug or cosmetic under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.
> (2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug or cosmetic under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.
> (3) Where an Inspector takes a sample of a drug 2[or cosmetic] for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he willfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:
>
> Provided that where the sample is taken from premises whereon the drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only:
>
> Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.
> (4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—
>
> (i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;
> (ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug or cosmetic; and
> (iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.
>
> (5) Where an Inspector takes any action under clause (c) of section 22,—
>
> (a) he shall use all dispatch in ascertaining whether or not the drug or cosmetic; contravenes any of the provisions of section 18 and, if it is ascertained that the drug or cosmetic; does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

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> (b) if he seizes the stock of the drug or cosmetic; he shall as soon as may be inform a Judicial Magistrate and take his orders as to the custody thereof;
> (c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug 1[or cosmetic]; he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.
> (6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof."

15. From a reading of Section 23, it clearly comes out that where an Inspector lifts any sample of drug from any premises, whether it is of manufacturer or seller, he shall tender the fair price of such lifted drug sample. The Inspector shall be under an obligation to intimate to the Incharge of the premises concerned the purpose of lifting of the drug sample in writing in the prescribed Form and thereafter shall divide the sample into four portions and effectively seal and suitably mark the same and permit the person from whose premises the sample had been lifted to add his own seal and mark to all or any of the portions so sealed and marked. However, where the sample is picked up from the premises where the drug is being manufactured, the lifted sample shall be divided into three portions only. Upon apportionment of the lifted sample, Inspector shall handover one portion of the sample to the person from whom the sample had been picked up and shall retain the remainder and dispose of the same in the following manner:-

i) One portion shall be sent to government analyst for test or analysis;

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ii) Second portion shall be produced before the Court before which proceedings, if any, are initiated in respect of such drug; and

iii) The third portion shall be sent to the manufacturer where it has not been lifted from the premises of the manufacturer, and the particulars whereof are disclosed under Section 18A of the Act.

16. Section 25 of the Act is the next important Section for our purposes and the same is set out below:-

> *"25. Reports of Government Analysts. —(1) The Government Analyst to whom a sample of any drug or cosmetic] has been submitted for test or analysis under sub-section (4) of 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 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 controversion 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 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 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.*
> *(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."*

17. As is clearly prescribed in Section 25, the government analyst, who has received the sample from the Drug Inspector concerned for test or analysis under Section 23(4) of the Act, shall deliver its signed report in triplicate in the prescribed form to the

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Inspector. The next step is that the Inspector shall deliver one copy of the report to the person from whom sample was taken and another copy to the person, if any, whose name and address and other particulars have been disclosed under Section 18A i.e. manufacturer. He shall retain third copy for use in any prosecution in respect of the sample. Section further provides that if any document purporting to be a report signed by the government analyst under Chapter-IV is tendered in the Court of law, the same shall be admissible evidence of the facts stated therein and such evidence shall be conclusive, unless, of course, person from whom sample was taken or the manufacturer referable to Section 18A has within 28 days of receipt of copy of analysis report notifies in writing to the Inspector or the Court concerned that he intends to adduce evidence in controversion of the report.

18. If the person from whom the sample was taken or manufacturer, as the case may be, gives such intimation of intention to adduce evidence in controversion of government analyst report, the Court where the prosecution is launched, may, of its own motion or in its discretion, on the request of either of the complainant or the accused, cause the sample of the drug produced before the Court under Section 23(4) to be sent for test or analysis by the Central Drug Laboratory. The drug sample shall not be sent if the same has already been tested or analysed by the Central Drug

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Laboratory. Section further provides clearly that once report from the Central Drug Laboratory comes, same shall be the conclusive evidence of fact stated therein and the parties shall not be entitled to dispute the same. This is the scheme of things to be done before launching the prosecution against the accused found guilty of commission of offence under Chapter-IV of the Act.

19. From a plain reading of Sections 23, 24 and 25, following procedural requirements for launching prosecution under Chapter-IV are deducible:-

i) Inspector within the local limits of the area for which he is appointed is empowered to take any sample of drug or cosmetic under Chapter-IV of the Act after tendering fair price thereof to the person from whom it is taken.

ii) Inspector, who takes a sample of drug or cosmetic for the purposes of test or analysis shall intimate such purpose in writing in the prescribed form to the person from whom he has lifted it.

iii) The lifted sample shall, in the presence of such person, be divided into four portions and effectively sealed and suitably marked. However, if the sample is lifted from the premises of the manufacturer, it shall be divided into three portions only.

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iv) One portion of the sample, so divided, shall be restored/handed over to the person from whom it has been taken and the remaining three portions shall be retained by the Inspector to be disposed in the following manner:-

a) One portion shall be sent to the government analyst for test and analysis;

b) Second portion shall be produced in the court before which proceedings, if any, are instituted in respect of such drug;

c) Third portion shall be sent to the person, if any, whose name and other particulars are disclosed under Section 18A of the Act i.e. manufacturer.

d) After the signed report in triplicate in the prescribed form from the government analyst in respect of the sample sent to him for test or analysis is received, the Inspector shall deliver one copy of the report to the person from whom it has been taken and another copy to the person whose name and other particulars have been disclosed under Section 18-A i.e. the manufacturer. He shall retain the third copy of the analysis/report for use in any prosecution in respect of the sample.

e) The government analyst's report tendered in evidence shall be conclusive evidence of the facts stated therein unless the person from whom the sample was taken or

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the manufacturer within 28 days of receipt of copy of the report notifies in writing to the Inspector or the Court that he intends to adduce evidence in controversion of the report.

f) If notice of intention to adduce evidence in controversion of the report is given by the person aforesaid, the Court may of its own motion or in its discretion on the request of either of the complainant or the accused, cause sample of the drug produced before it by the Inspector under Section 23(4) of the Act to be sent for test or analysis to the Central Drug Laboratory, provided it is not already tested or analyzed by such laboratory. The report of the Central Drug Laborary given in this manner shall be the conclusive evidence of the facts stated therein.

20. In view of the aforesaid position emerging from the scheme underlying Sections 23 and 25 of the Act, it is not debatable that as and when a sample of drug is lifted by the Inspector from the premises where it is sold or manufactured, it shall, apart from complying with other formalities, divide the sample into four or three portions, as the case may. Four portions in case the sample is lifted from a person other than the manufacturer and three where sample has been lifted from the manufacturer. It is, thus, clear that if the sample is lifted from the premises of a person other than the manufacturer, it has to be divided into four

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portions or containers, as the case may. One portion has to be delivered to the person from it is lifted; one to be sent to the government analyst for test and analysis and the one is required to be sent to the manufacturer. The fourth one is to be retained to be produced in the Court where the proceedings in respect of the drug are filed by the Inspector/complainant.

21. Section 25(2) unequivocally prescribes that the government analyst's report received by the Inspector in respect of the sample of Drug alone is to be furnished to the person from whom it has been lifted or to the manufacturer as the case may be. There is, thus, no statutory obligation on the Inspector to send the portion of sample along with the report of the government analyst to be served upon the manufacturer in terms of section 25(2) of the Act. As is clearly provided in sections 23(4)(iii), the third portion of the lifted sample is required to be sent to the manufacturer simultaneously with sending of one portion to the government analyst for test and analysis and this is for a purpose and the purpose is to enable the manufacturer to put that portion of the sample to test and analysis by an independent Drug Laboratory, so that if the sample fails and an adverse report from the government analyst comes, he may make an informed decision as to whether he should adduce evidence in controversion of the report or take an appropriate defence in the complaint that may be filed by the Inspector on the basis of such

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report of the government analyst. I am, therefore, not in agreement with the learned counsel for the petitioner that along with the report of the government analyst, a sample portion is also required to be provided to the manufacturer. The supply of portion of the lifted sample before the report of analyst is received is compliance of Section 23(4)(iii) and a precursor for the manufacturer to get the lifted sample tested and analyzed by the drug laboratory of his choice.

22. As is evident from a reading of Subsection (3) of Section 25 of the Act, the report of the government analyst in respect of the sample of drug tested and analyzed by it submitted to the Inspector concerned is conclusive evidence of the facts stated therein, if same is not controverted by the person from whom the sample had been lifted or the manufacturer, as the case may be. The procedure for controverting the report is that such person must within 28 days of receipt of copy of the report notify to the Inspector or the Court concerned that he intends to adduce evidence in controversion of the report. He may not seek reference of the sample produced before the Court concerned by Inspector under Section 23 of the Act and choose to contest the report of the government analyst by adducing evidence in controversion thereof. Sending of the sample to the Central Drug Laboratory in a case where it has been tested or analyzed by the government analyst cannot be claimed either by the complainant

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or the accused (Manufacturer), as a matter of right. It is left to the discretion of the Court to either *suo moto* send such sample to the Central Drug Laboratory for test or examination or it may in its discretion send the same for test and analysis to the Central Drug Laboratory on the request of either of the complainant or the accused. However, once the Court on its own motion or at the request of the complainant or the accused, as the case may be, sends the drug sample to the Central Drug Laboratory for test and analysis and the report comes, such report, in terms of Subsection (4) of Section 25 shall be the conclusive evidence of the facts stated therein and the complainant or the accused shall be left with no discretion or option but to accept it without any protest or objection.

23. Viewed, thus, we can say that even in a case where the person from whom the sample of drug is lifted or manufacturer of such drug, as the case may be, has not exercised its intention to adduce evidence in controversion of the report within the prescribed period, he shall not be debarred from contesting the complaint and leading its defence but he shall be precluded from adducing evidence in controversion of the report.

24. Similarly, notwithstanding that the Court may have refused to refer the portion of sample produced before it by the Inspector under Section 23(4) to the Central Drug Laboratory for test and analysis, report of the analyst shall be liable to be controverted

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by the accused by adducing its evidence and such evidence could be the report from another Drug Laboratory or some scientific evidence. The provisions of Sections 23 and 25 are, therefore, required to be understood in the manner aforesaid.

25. Now coming to the case on hand, it is seen that though at the time of lifting of sample of the drug in question, the Inspector divided it into four portions in the presence of accused No.1 i.e. Shiv Shakti Medicos but it is not discernible from reading of the complaint that a portion of such sample lifted from the premises of M/s Shiv Shakti Medicos was ever sent to or supplied to the manufacturer whether before or simultaneously with government analyst report. As a matter of fact, the notice to the manufacturer was given only after his particulars in terms of section 18A of the Act were disclosed by the Amro Pharma i.e. accused No.4. There is no whisper in the complaint that the portion of sample retrained and meant for manufacturer was ever supplied to him. On the contrary, it is a specific case of the petitioner that he was never supplied with a portion of the sample lifted from the premises of M/s Shiv Shakti Medicos. It is, thus, beyond any pale of doubt that a valuable right of the petitioner to get the sample tested from an independent Drug Laboratory so as to make an informed decision to adduce evidence in controversion of the report of the government analyst relied upon by the

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complainant, was taken away and as such a serious prejudice was caused to it.

26. Hon'ble Supreme Court in paragraph Nos. 7, 8 and 9 of ***Laborate Pharmaceuticals India Ltd. and others v. State of Tamil Nadu***, **(2018) 15 SCC 93** has observed thus:

> "*7. A reading of the provisions of Section 23(4) and 25 of the Act would indicate that in the present case the sample having been taken from the premises of the retailer had to be divided into four portions; one portion is required to be iven to the retailer; one portion is required to be sent to the Government Analyst and one to the Court and the last one to the manufacturer whose name, particulars, etc. is disclosed under Section 18A of the Act. In the present case, admittedly, one part of the sample that was required to be sent to the appellant(manufacturer) under Section 23(4)(iii) of the Act was not sent. Instead, what was sent on 22nd March, 2012 was only the report of the Government Analyst. When the part of the sample was not sent to the manufacturer, the manufacturer could not have got the same analyzed even if he wanted to do so and, therefore, it was not in a position to contest the findings of the Government Analyst. In the present case, the sample was sent to the appellant-manufacturer on 10th August, 2012 and on 13th September, 2012 the appellant had indicated its desire to have another part of the sample sent to the Central Laboratory for re-analysis. This was refused on the ground that the aforesaid request was made much after the stipulated period of 28 days provided for in Section 25(3) of the Act.*
>
> *8. The cognizance of the offence(s) alleged in the present case was taken on 4th March, 2015 though it appears that the complaint itself was filed on 28th November, 2012. According to the appellant the cough syrup had lost shelf life in the month of November, 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was*

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> *taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.*
>
> *9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4)(iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution."*

27. That apart, the sample was received by the government analyst on 23.02.2010 and the government analyst submitted its report to the Inspector on 19.07.2010 i.e. after nearly five months, whereas Rule 45 of the Drugs and Cosmetics Rules, 1945 fixes a timeline of sixty days for the government analyst to furnish its report of the result of test or analysis from the date of receipt of the sample. This timeline was, however, inserted in Rules vide GSR 103(E) dated 02.02.2017 w.e.f. 02.02.2017 and, therefore, may not be applicable to the case on hand. However, even in the absence of a given timeline, it is the obligation of the government analyst to act with promptness and furnish report of the test or analysis within reasonable time so that the accused are

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in a position to approach the Court concerned in time i.e. before the shelf life of drug in question expires for seeking reference of the drug sample produced in the Court for test and analysis of the Central Drug Laboratory after notifying their intention to adduce evidence in controversion of the report of the government analyst.

28. Although, the complainant-Inspector has, in his complaint, averred that he issued notice to the accused-manufacturer i.e. petitioner herein on 28.08.2010 through registered post informing the petitioner about the test report of the drug in question manufactured by it, yet there is no proof placed on record that the report was sent on correct address and was actually received by the petitioner. It is unequivocal assertion of the petitioner before me that it has never received the report of the government analyst, as is stated to have been sent to it by the Drug Inspector vide communication dated 28.08.2010. It is submitted that Company came to know about the report of the government analyst only when pursuant to the summons issued by the trial Court on 10.07.2012, the petitioner appeared before the trial Court and was confronted with the report of the government analyst. Copy of the communication dated 28.08.2010 whereby the Drug Inspector concerned claimed to have sent the report of the government analyst to the petitioner would show that it has been addressed to August Remedies, Ogli-Nahan Road, Kala Amb (H.P.), which, on the face of it, is

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not a complete address. District where the manufacturing unit of the petitioner is situated is not indicated. Receipt of the registered letter also indicates the same address, whereas from all the communication on record and the documents in possession of the accused No.1, complete address of the petitioner herein is Auguest Remedies, Vill. Ogli, Nahan Road, Kala Amb, District Sirmour (H.P.).

29. In view of the aforesaid, a serious doubt is created in the mind of the Court with regard to the actual service of the report of the government analyst on the petitioner and if that be the case, a vital right of the petitioner to intimate its intention to adduce evidence in controversion of the report of the government analyst within a period of 28 days of the receipt of the government analyst's report is taken away and clearly violated and denied.

30. That apart, failure of the complainant to supply a portion of the lifted sample to the petitioner has also deprived the petitioner of its right to get it tested or analyzed from any independent laboratory and making an informed decision to adduce evidence in controversion of the report of the government analyst and conveying its intention to do so to the Drug Inspector or the Court. It was also deprived of its right to apply to the Court for sending the retained portion of the sample for its test or analysis to the Central Drug Laboratory.

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31. Viewed from any angle, the complaint filed by respondent No.2 was not maintainable in law and, therefore, proceedings taken in such complaint are completely vitiated. Allowing such complaint to proceed and putting the petitioner to trial would be sheer abuse of the process of law and, therefore, cannot be countenanced.

32. For all these reasons, I find merit in this petition and the same is, accordingly, allowed. The complaint filed by respondent No.2, pending trial before the Court of Chief Judicial Magistrate, Jammu along with all proceedings taken thereon is quashed.

(Sanjeev Kumar)
Judge

JAMMU
09.03.2026
Vinod

Whether the order is speaking : Yes
Whether the order is reportable: No