

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No. 6682 of 2014

Between:

1. M/s.Zest Pharma, 275, Sector 'F',
Sanwer Road, Indore – 452 015,
Represented by its Partners.
2. Sudhir Vora, S/o.Late Shri Navneetlal Vora,
Partner, M/s.Zest Pharma, Aged about 54 years,
R/o.BG 99 Scheme No.74c, Indore,
Madhya Pradesh.
3. Sanjay Zatakia, S/o.Shri Shantilal Zatakia, Partner,
M/s.Zest Pharma, Aged about 42 years,
R/o.BG 25 Scheme No.54, Indore, Madhya Pradesh.
4. Shweta Vora, W/o.Shri Sudhir Vora, Partner,
M/s.Zest Pharma, Aged about 54 years,
R/o.BG 25 Scheme No.54, Indore,
Madhya Pradesh. ... Petitioners/A.1 to A.4

And

1. The State of A.P., Represented by Public Prosecutor,
High Court of A.P., Amaravati.
2. The State of Andhra Pradesh,
Represented by Drugs Inspector, Ongole.
.... Respondents

DATE OF JUDGMENT PRONOUNCED: **26-09-2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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And

1. The State of A.P., Represented by Public Prosecutor,
High Court of A.P., Amaravati.
2. The State of Andhra Pradesh,
Represented by Drugs Inspector, Ongole. Respondents

! Counsel for Petitioners : Sri Sunil Gawasane

^ Counsel for Respondents : Asst.Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. AIR 1998 SC 1919
2. 2018 SCC Online P&H 5958
3. 2014 SCC Online P&H 24852
4. 2000 SCC Online AP 766

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**CRIMINAL PETITION No. 6682 of 2014****ORDER:**

This Criminal Petition has been filed by the petitioners/A.1 to A.4 under Section 482 of the Code of Criminal Procedure, 1973, (for short "Cr.P.C") for quashing the proceedings in C.C.No.316 of 2013 on the file of the Court of II Additional Munsif Magistrate, Ongole, for the offence under Sections 18(a)(i) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act"), against them.

2. Heard Sri Challa Ajay Kumar, learned counsel instructed by Sri Sunil Gawasane, learned counsel for the petitioners, and learned Assistant Public Prosecutor for respondent No.1-State.

3. The brief facts of the case are as follows:

(i) On 20.09.2004, the Drugs Inspector-P.Rambabu (L.W.1) picked up the drug sample "Atenolol Tablets IP", Batch No.4007, Manufacturing Dated 05/2004 and Expiry Date 04/2007, manufactured by M/s.Zest Pharma, Indore(A.1) for analysis from the premises of A.P.H.M.H.I.D.C. Central Drug Stores, M.C.Hospital Campus, Ongole, in the presence of Pharmacist Grade-II (L.W.2) under intimation in Form No.17, as

per Section 23 of the Act. On the same day, the Drug Inspector (L.W.1) sent one sealed portion of the sample drug (Atenolol Tablets IP) to the Government Analyst, Drugs Control Laboratory, Hyderabad, along with Form No.18 through registered post, for analysis.

(ii) The State Analyst submitted his report dated 31.12.2004 to the effect that “the samples were not of standard quality”, as defined under the Act, as the sample does not meet the IP specifications for disintegration test for uncoated tablets and the said report was received by the Drugs Inspector (L.W.1) on 05.01.2005. On receipt of the said report, on 06.01.2005 the Drugs Inspector (L.W.1) addressed a letter to L.W.2 – Pharmacist, Grade-II with a request to disclose the name, address and other particulars of the person from whom the drugs had been purchased/acquired, enclosing the attested copies of purchase invoice bill. In compliance, on 18.02.2005 Drugs Inspector (L.W.1) received a reply from L.W.2 – Pharmacist Grade-II, APMHIDC Central Drug Stores, Government Hospital Campus, Ongole stating that they had purchased the sample drug (Atenolol Tablets IP) Batch No.4007, Mfg.5/2004, Exp.4/2007, manufactured by M/s.Zest Pharma, Indore(A.1) *vide* Invoice No.700 dated 24.06.2004 with purchase

Order No.37/2K4-Q1/135D, dated 10.05.2004 of Managing Director, APHMHIDC, Hyderabad, dated 18.02.2005.

(iii) Before getting the above information, on 17.02.2005, a letter was received by the Drug Inspector(L.W.1) from M/s.Zest Pharma stating that they disagreed with the findings and the opinion of the Senior Scientific Officer and requested that the sample portion also be sent to the Central Drugs Laboratory, Calcutta for the test/analysis. On 21.02.2005 a letter was sent to A.1- Drug Manufacturing Firm by L.W.1-Drug Inspector stating that one sealed portion of the drug sample would be sent to the Central Drugs Laboratory, as requested by the Firm(A.1) and also requested to furnish (a) manufacturing records for the above subject batch drug, (b) complete sale particulars of the drug, (c) names and addresses of technical persons responsible for the manufacturing the subject drug and constitutional particulars of the Firm along with attested Xerox copies of manufacturing licence held by the Firm as required under Section 18-B of the Drugs and Cosmetics Act.

(iv) On 13.04.2005, A.1-Firm gave a reply stating that they sent the batch manufacturing records of the subject drug and did not send constitution particulars. On 26.04.2005 the

Drugs Inspector (LW1) sent another letter to M/s.Zest Pharma(A.1) requesting to pay the analysis fee.

(v) On 19.09.2005 the Drugs Inspector (LW1) produced the sealed portion of the seized drug before the learned II Additional Munsif Magistrate, Ongole, with a request to send the same to the Director, Central Drugs Laboratory, Calcutta for analysis and the said samples were received by the Court in C.P.R.No.57 of 2005 dated 20.09.2005 and on 21.09.2005 the said sample was sent to the Director, Central Drugs Laboratory, Calcutta by the learned Magistrate. On 22.07.2006 the Drugs Inspector (L.W.1) and on 23.05.2007 L.W.3-N.Rama Moorthi requested the Court to furnish the analyst report of the said drug sample.

(vi) On 30.12.2009 the Drugs Inspector (LW1) sent a letter to the Director of the Central Drugs Laboratory with a request to furnish the Analytical Report. In response to the said letter, he informed on 19.01.2010 that the sample was sent to the Hon'ble Court long back in 2005-06 *vide* Lr.No.2-1/2005-PNP/CC/129/5136, dated 21.11.2005 along with the test report opining that "the sample is not of standard quality as defined in Drugs Act and the Rules declaring that the sample was not of standard quality".

(vii) On 14.02.2011 Drugs Inspector(L.W.4) requested to furnish constitution particulars of the firm and also a letter dated 22.12.2011 was addressed by the Drugs Inspector (L.W.5) for the same purpose, but there was no response from A.1-Firm. On 10.05.2012 the Drugs Inspector (L.W.5) addressed a letter to the Director General of Drugs and Copy Rights, Hyderabad to visit Indore and get constitution particulars. On 28.05.2012 the Director General of Drugs and Copy Rights, Hyderabad, gave permission for the purpose mentioned above. On 25.07.2012 the Drugs Inspector(L.W.5) visited the Office of Food Controller and Drugs Administration, Madhya Pradesh, Bhopal and got constitution particulars i.e., list of partners of the Firm, photocopy of the partnership deed of the firm, copy of the renewal application, Form Nos.24 and 27.

(viii) On 26.07.2012 L.W.5-Drug Inspector went to M/s.Zest Pharma, Indore(A.1) and got self-attested documents by its authorized signatory, which confirms the partners of the firm i.e., Petitioners/A.2 to A.4. Due to a mistake, the Central Drugs Analyst Report, which was received by the Hon'ble Court, was not handed over to the Drugs Inspector/complainant. On the request of the Drugs Inspector, the Director of Central Drugs Laboratory sent the duplicate copy of the analyst report dated

21.11.2005 to file it before the Hon'ble Court along with the complaint with the opinion that the said sample does not conform to IP Disintegration Test, in Form No.2 and opined that "the said sample is not of standard quality", and communicated the same through a letter dated 07.01.2010 to the Drugs Inspector(Rama Moorthi) along with Central Drugs Laboratory reported dated 21.11.2005 as the drug was declared as not of standard quality by the Government Analyst, Drugs Control Laboratory, Hyderabad and also by the Central Drugs Laboratory, Calcutta. Thus, the petitioners/A.1 to A.4 contravened Section 18(a)(i) read with Section 16 by manufacturing and selling of "not of standard quality Drug" Atenolol IP 50 mgs tablets which is punishable under Section 27(d) of Drugs and Cosmetics Act, 1940. The Drugs Inspector filed a complaint against the above firm and their partners before the Court of II Additional Judicial Magistrate of First Class, Ongole, on 05.03.2013 (the Drugs Inspector put the date underneath his signature in the complaint) alleging the commission of offence under Section 27(d) of the Act. The learned Magistrate took cognizance upon the complaint by condoning the delay of 45 days and issued a process against the petitioners, who are arraigned as A.1 to A.4.

(ix) Aggrieved thereby, the petitioners/A.1 to A.4 moved the present criminal petition under Section 482 Cr.P.C for quashing the proceedings initiated against them in the above C.C.

4. Learned counsel for the petitioners would submit that Section 27(d) of the Act shall be punishable with an imprisonment not less than one year which may extend up to two years. Under Sections 468 and 469 Cr.P.C., the limitation to file a complaint is within three years from the date of receipt of the report dated 31.12.2004 from the Government Analyst. The Drugs Inspector received the said report on 05.01.2005 and the present complaint was filed on 05.03.2013 i.e., with a delay of 8 years 2 months. The present complaint was filed on 05.03.2013 is beyond the period of limitation of three years and the said complaint is not maintainable and therefore, he would pray for quash of the complaint filed against the petitioners/A.1 to A.4 in C.C.No.316 of 2013 on the file of the Court of II Additional Munsif Magistrate, Ongole.

5. The learned Assistant Public Prosecutor would submit that there is no merit in the contention of the petitioners/A.1 to A.4. He would further submit that the matter requires trial to ascertain the truth or otherwise. There are absolutely no valid

legal grounds emanating from the record warranting interference of this Court under Section 482 Cr.P.C to quash the proceedings against the petitioners/A.1 to A.4. Further he would submit that the present complaint was filed with a delay of 45 days from the date of receipt of Central Drugs Laboratory report received by the Drugs Inspector and the same was condoned by the learned Magistrate and took cognizance. Therefore, the question of causing delay in filing the complaint does not arise. He would further submit that as per the State Analyst Report and Central Analyst Report, the sample does not conform to IP with respect to the disintegration test and declared that the sample was “not of standard quality”. Further, he would submit that when such a report was given by the analysts, the manufacturers of drugs are playing with human life by supplying the sub-standard quality of medicines and they cannot leave on technical grounds. Further, he would submit that there is no force in the arguments submitted by the learned counsel for the petitioners and as such, the matter requires trial to ascertain the truth. Further, he would submit that the names of the manufacturers of the drug and constitution particulars of the Firm are to be disclosed by the retailer and in the instant case, it was belatedly disclosed, which caused delay in filing the complaint and further

the report of the Central Drugs Laboratory was not communicated by the Court to the Drugs Inspector immediately after receipt of the same. After correspondence, the Director of Central Drugs Laboratory furnished the duplicate copy of the Central Drugs Laboratory Report along with a covering letter to the complainant on 07.01.2010 which caused the delay in filing the complaint. Therefore, he would pray for the dismissal of the criminal petition.

6. Now the point for determination is:

Whether there are any merits in this criminal petition to allow?

POINT:

7. At the outset, it will be apposite to extract Section 27 (d) of the Act. It reads as under:

“27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—

(a)

(b).....

(c).....

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years 5 [and with fine which shall not be less than twenty thousand rupees.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.”

8. In light of the above provision, the minimum sentence prescribed is one year but it may extend up to two years with fine. For such offences, the limitation is prescribed for filing a complaint.

9. Section 468 Cr.P.C is applicable to the special enactments where the said enactment is silent with regard to the procedure applicable for the offences prescribed therein. It will be apposite to extract Section 468 Cr.P.C which reads as under:

“468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) ……….”

10. In the light of the above provisions, the only question that arises for consideration is, whether the complaint in question is

barred by limitation under Section 468 Cr.P.C. In the light of the above-said provision, if the punishment provided for an offence in any act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year; and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years.

11. Section 469 Cr.P.C deals with commencement of the period of limitation, which reads as follows:

“469. Commencement of the period of limitation.—(1) *The period of limitation, in relation to an offender, shall commence,—*

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

12. A plain reading of the provisions extracted above shows that when the report of the Government Analyst was received, it came to light that the provisions of the Act were violated and the offence was committed by the petitioners/A.1 to A.4. From the facts of this case, the limitation will start from the date of knowledge of the offence by the Drugs Inspector when the report of the Government Analyst dated 05.01.2005 was received. Therefore, Clause (b) of Section 469 (1) Cr.P.C will be attracted.

13. In answer to this question, a reference should be made to the observations of the Hon'ble Supreme Court in **State of Rajasthan Vs. Sanjay Kumar & Ors.**,¹ which are as follows:

“12., in the instant case, the limitation for the purpose of Section 468(2)(c) will commence from 2-7-1988, the date of knowledge of the commission of offence to the officer concerned under Section 469(1)(b) but not from 29-2-1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on 28-6-1991 which is within three years so the complaint is not barred by limitation under Section 468(2)(c). The High Court has missed this germane aspect and erroneously taken the date of commencement of the limitation as 29-2-1988, the date on which the samples were collected by the Drugs Inspector from Accused 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.”

14. In **M/s.Zimidara Kheti and another Vs. State of Punjab**² the Punjab and Haryana High Court held as under:

¹ AIR 1998 SC 1919

² 2018 SCC Online P&H 5958

“...as per the mandate of Section 468(3) of Cr.P.C.; and Judgment of Supreme Court in the case of State of Rajasthan (supra) complaint in the present case could have been filed, at the best, within a period of 03 years from the date of receipt of report of the Government Analyst.”

15. In **M/s.P.B.Pesticides and another Vs. The State of Punjab and others**³, the Punjab and Haryana High Court held as under:

"On receipt of the report of the Laboratory, this fact came to the notice of the complainant that the sample was misbranded and thereafter period of limitation starts....."

16. In the light of the above judgments, having heard the learned counsel for the parties, this Court finds adequate substance in the arguments raised by the learned counsel for the petitioners. A bare perusal of the facts of the case shows that the report of the Government Analyst has been received by the Drugs Inspector on 05.01.2005. Hence, as per the mandate of Section 468(3) Cr.P.C and the judgment of Hon'ble Supreme Court in *State of Rajasthan supra*, the complaint in the present case could have been filed at the best within a period of 3 years from the date of receipt of the report of the Government Analyst i.e., on 05.01.2005. However, the complaint has been filed after 8 years 2 months from the said date. Hence, the complaint in the present case is hopelessly time-barred.

³ 2014 SCC Online P&H 24852

17. The trial Court has the power to extend the period of filing the complaint beyond the period prescribed under the provision of Section 473 Cr.P.C. The complainant has moved an application for such an extension of time and mentioned the delay of 45 days from the date of receipt of the report dated 21.11.2005 of Central Drugs Laboratory, Calcutta received by the Drug Inspector on 19.01.2010.

18. In **Ch.Narender Reddy Vs. State of A.P.**,⁴, this Court at Para No.9 held as follows:

“9. But even according to the provisions of Section 473, Cr.P.C. without hearing both the parties on the point, exercising discretion under Section 473, Cr.P.C. is another illegality that has been resorted to in this case by the learned Sessions Judge. It is not a case where the hearing on the question of limitation has been postponed at the time when the initial cognizance was taken by the Court, nor it is a case where both the parties have been heard on that point at the time of the conclusion of the trial. This approach of the learned Judge to this legal aspect again is not correct. When once the provisions of Section 473, Cr.P.C. cannot be invoked unilaterally as aforesaid, the offence under Section 498-A of the Penal Code, 1860 has been clearly barred in view of the provisions of clause (c) of sub-section (2) of S. 468, Cr.P.C. The initial cognizance by the Court itself is wrong and vitiates the entire subsequent trial”

19. In the light of the above decision, even in the present proceedings, though the complainant filed a petition for condonation of the delay, no proper explanation has been given for the huge delay of 8 years and 2 months from the date of

⁴ 2000 SCC Online AP 766

receipt of the State Analyst Report dated 05.01.2005 from which date the limitation starts. But, the delay is 45 days from the date of receipt of the report from the Central Drugs Laboratory dated 19.01.2010 showing the delay of 45 days in filing the complaint in contrary to the law laid down by the Hon'ble Apex Court *supra*. In spite of a delay condone petition was filed by the complainant but there is no material placed on record to show that the learned Magistrate has condoned the delay or not and no order has been passed by the learned Magistrate condoning the delay of 45 days except taking cognizance directly on the complaint. There is no order recorded by the learned Magistrate satisfying the explanation given by the complainant for condonation of such a delay of 45 days. In the present case, showing the delay of 45 days is not appropriate and correct and the limitation starts from the date of receipt of State Analyst Report dated 31.12.2004 received by the Drug Inspector(L.W.1) on 05.01.2005.

20. The Director of Central Drugs Laboratory, Calcutta sent a CDL report to the learned Magistrate on 21.11.2005. However, the Drugs Inspector (L.W.1) and in the continuation of the investigation, L.Ws.2 to 5 have not shown any interest in collecting the report from the Court to file a complaint within

time. It shows gross negligence on the part of the L.Ws.1 to 5 in filing the complaint with a delay of 8 years and 2 months. All of them are equally liable for their inaction and the consequent delay in filing the complaint. This Court does not find any explanation furnished by them. Hence, the complaint has been filed after 8 years and 2 months from the date of receipt of State Analyst Report. The complaint in the present case is hopelessly time-barred.

21. Since taking cognizance by the Court itself is prohibited, in case the complaint was not filed within the prescribed period, therefore, the subsequent proceedings in the form of a summoning order also stand vitiated. In view of this, there is no legal justification, whatsoever, for the continuation of the proceedings against the petitioners/A.1 to A.4, which is nothing but an abuse of the process of law.

22. The unexplained delay in filing the complaint is 8 years 2 months from the date of receipt of the Government Analyst report dated 05.01.2005 and has led to a wastage of precious time of the Courts. Resultantly this Court deems it appropriate to direct the Registry to communicate a copy of this Order to the Director General of Drugs Control, Andhra Pradesh to take necessary action against the Drug Inspectors concerned, for the

delay in filing the complaint after more than 8 years from the date of receipt of Government Analyst Report dated 31.12.2004 received by Drugs Inspector (L.W.1) on 05.01.2005. In a case of this nature, the seized drug sample "Atenolol Tablets IP", Batch No.4007, Manufacturing Dated 05/2004 and Expiry Date 04/2007, manufactured by M/s.Zest Pharma, Indore was sent to the Government Analyst who opined that the said drug is "not of standard quality". The said sample does not conform to IP with respect to the disintegration test. Having knowledge of the analyst report dated 05.01.2005 and CDL report dated 21.11.2005 by the complainant and subsequent Drug Inspectors L.Ws.2 to 5 knowing fully well that the drug was expired by 04/2007, they have not chosen to file the complaint within the period of limitation (three years). The said gross negligence cannot be taken in a lighter view. Therefore, the Director General of Drugs Control, Andhra Pradesh shall take appropriate action against the concerned.

23. In view of the above discussion and the facts and circumstances of the case, this Court finds that the initiation and continuation of the complaint and the consequent proceedings against the petitioners/A.1 to A.4, are not legally justified and sustainable. Because of the delay of 8 years and 2

months caused by the complainant, from the date of receipt of report of the State Analyst dated 05.01.2005, the present proceedings have resulted in misuse of process of law and defeating the ends of justice. It is thus clear that the learned Magistrate committed illegality in so computing the period of limitation which results in miscarriage of justice. Hence, as per mandate of Section 468 (3) Cr.P.C., and the judgment of the Hon'ble Supreme Court in the case of *State of Rajasthan (supra)*, complaint in the present case could have been filed, at the best within a period of three years from the date of receipt of report of the Government Analyst. Hence, the complaint in the present case is hopelessly time-barred and therefore, the petitioners/A.1 to A.4 can no more be kept subject to the proceedings of the complaint. Accordingly, the complaint and consequent proceedings arising there from, deserve to be quashed.

24. Accordingly, the criminal petition is allowed and the proceedings against the petitioners/A.1 to A.4 in C.C.No.316 of 2013 on the file of the Court of II Additional Munsif Magistrate, Ongole, for the offence under Sections 18(a)(i) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, are hereby quashed.

Registry is directed to communicate a copy of this Order to the Director General of Drugs Control, Andhra Pradesh within a week from this day.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

26.09.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CRIMINAL PETITION No.6682 OF 2014

26.09.2023

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