

V.V. Sai and anr. Vs. State of A.P. Rep. by Drug Inspector

V.V. Sai and anr. Vs. State of A.P. Rep. by Drug Inspector

SooperKanoon Citation : sooperkanoon.com/444250

Court : Andhra Pradesh

Decided On : Sep-25-2001

Reported in : 2001(2)ALD(Cri)688; 2001(2)ALT(Cri)417

Judge : Gopalakrishna Tamada, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 18, 23, 27C and 28; Code of Criminal Procedure (CrPC) - Sections 468(1)

Appeal No. : Criminal Petition No. 1351 of 1999

Appellant : V.V. Sai and anr.

Respondent : State of A.P. Rep. by Drug Inspector

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Katta Laxmi Prasad, Adv.

Disposition : Petition dismissed

Judgement :

1. This is a petition filed by the petitioners, who are arrayed as A-3 and A-4, to quash the proceedings in C.C. No.314 of 1997 on the file of the Judicial I Class Magistrate (Mobile), Mahaboobnagar, which was filed under Section 32 of the [Drugs and Cosmetics Act, 1940](#) (hereinafter referred to as 'the Act').

2. A complaint was filed against the petitioners herein and others viz., M/s. Vasavi Integrated Service Company (A-1); Sri O.S.S. Prasad (A-2), which was registered as C.C. No.314 of 1997, alleging as follows:-

On 31-12-1994, the Drugs Inspector i.e., L.W.1, seized the drug 'Tetracycline' Capsules I.P., Batch No.433, wherein it is mentioned that the manufacturing date is March 1994 and the expiry date is February 1996, manufactured by Maharashtra Antibiotics and Pharmaceuticals Limited, Nagpur, from the Stores of District Medical & Health Officer, Mahabubnagar. After following the procedure as laid down under Section 23 of the Act, the Drugs Inspector sent the sample to the Government Analyst who submitted a report dated 28-2-1995 to the effect that the sample drug is 'not to standard quality' for the reason that the content of Tetracycline, Hydrochloride was found only 135.3 mg., instead of 250 mg. as printed on the label. The Drugs Inspector issued a notice under Section 18-A of the Act to the District Medical & Health Officer, Mahabubnagar to furnish the names and addresses of the persons from whom the said drug was purchased. Pursuant to that, the District Medical & Health Officer furnished the names and addresses of the accused, including the petitioners herein, who are the partners of A-1-firm and on that the Drugs Inspector served another notice under Section 18-A of the Act to A-1-firm and handed over the third portion of the sample to A-2 along with analyst report dated 28-2-1995. After receipt of the notice, A-1-firm gave the information on 19-6-1995 that they purchased 1,49,000 Tetracycline Capsules I.P. 250 mg., Batch No.433 from M/s. Maharashtra Antibiotics and Pharmaceuticals Limited, Nagpur vide Invoice No.3531113 dated 10-3-1994 and 90,000 capsules vide Invoice No.3531110 dated 9-3-1994. Later, the Drugs Inspector filed a complaint in C.C. No.314 of 1997 before the learned Magistrate for the alleged offences punishable under Sections 27(c), 27(d) and Section 28 of the Act.

3. The present petition is filed on the grounds that -

(a) The Drugs Inspector did not follow the procedure as contemplated under Section 23 of the Act while seizing the sample of drug on 31-12-1994 i.e., without informing the person from whom the said sample was taken and also directing the said person to add his own seal and mark to all and any of the portion so sealed or

marked as contemplated under Section 23(3) of the Act.

(b) The notice under Section 18-A and the analysis report is furnished only to A-1-firm, represented by A-2, but no notice as contemplated under Section 18-A is served on the petitioners.

(c) Section 18-A notice and the analyst report were served on 14-6-1995, by which time the expiry date of the sample is over and as such the shelf-life expired; and

(d) The manufacturer i.e., Maharashtra Antibiotics and Pharmaceuticals Limited, who manufactured the said product is not arrayed as an accused, which caused great prejudice to the petitioners.

4. Sri J.V. Suryanarayana, learned senior counsel, reiterated the grounds urged in the petition and further submitted that the complaint filed by the Drugs Inspector is not maintainable as he is not a person notified in the Gazette to launch prosecution and that the alleged firm of A-1 got dissolved with effect from 31-12-1994 and by the time the analysis report dated 28-2-1995 is received, the petitioners are no more the partners of the said firm and as such the prosecution against the petitioners is not maintainable. In support of his contentions, Sri Suryanarayana relied on various Judgments reported in State Of Haryana V. Brij Lal Mittal, : 1998 CriLJ3287 , Amery Pharmaceuticals V. State Of Rajasthan, 2001 CRL. L.J. 1686 (SC), State Of Rajasthan V. Sanjay Kumar, : 1998 CriLJ2531 , M/S. Dueful Laboratory V. State Of Rajasthan, 1998 CRL. L.J. 4534 (Rajasthan High Court) and Meenaz Moloobhay v. State Of Maharashtra, 2000 CRL. L.J. 3998 (Bombay High Court).

5. The learned Public Prosecutor appearing for the respondents-State vehemently opposed the contentions raised on behalf of the petitioners. Learned Public Prosecutor contended that (a) for all practical purposes the date of seizure is the date to be taken into consideration for launching of prosecution; (b) even otherwise, the petitioners who are the partners of the firm cannot be exonerated on the simple ground that they are no more the partners of the said firm in view of the dissolution of the firm on 31-12-1994; (c) there is a specific averment in the complaint that the Drugs Inspector has strictly followed the provisions of Section

23 of the Act in drawing the samples and so the question as to how many samples were drawn is a factual aspect which has to be elicited during trial of the case; (d) the notice to A-1 and A-2 is a due notice on all the partners and as such the petitioners cannot complain that there is no notice issued under Section 25(2) of the Act to them; and (e) all those persons who are responsible for the day-to-day will be held responsible for the alleged offences under the provisions of the Act and it is not known at this juncture as to whether the petitioners herein are not actively connected with the day-to-day business or not. As such, the complaint as filed by the Drugs Inspector is maintainable. It is, therefore, contended that the present petition is liable to be dismissed.

6. In *Amery Pharmaceuticals* (2 *supra*), a contention was raised to the effect that the non-supply of one of the portions of sample to the manufacturer who is arrayed as an accused is contrary to the provisions of Sections 25(3) and 23(3) of the Act and as such the proceedings are vitiated. Their Lordships of the Supreme Court, however, held thus:

' ... If any of the persons who receives a copy of the report of the Govt. Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Govt. Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the Govt. Analyst and also part of sample, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other modes by which such facts can be disproved. He can also avail himself of the remedy indicated in sub-section (4) of S.25 of the Act by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory since if the manufacturer is disabled from challenging the facts contained in the document it would visit him with drastic consequences when he is arraigned in a trial. Any legal provision which snarls an indicated person without affording any remedy to him to disprove an item of evidence which could nail him down cannot be approved as consistent with the philosophy enshrined in Art.21 of the Constitution. Of course, no Court is under a compulsion to cause the said

sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the Court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in S.25 (4) of the Act is produced in Court the conclusiveness mentioned in that sub-section would become incontrovertible. When the provisions can be interpreted in such a way it is not congenial to the interest of criminal justice to acquit the manufacturers of forbidden medicines or drugs on a technical ground that there is a lacuna in the legislation by not supplying copy of the report of the Govt. Analyst to the manufacturer in certain situations. To adopt the course of acquitting such offending manufacturers only on the legislative lacuna (if at all it is lacuna) would be hazardous to public health and the lives of the patients to whom drugs are prescribed by medical practitioners would be in jeopardy. (paragraphs 25, 24 & 28) '

7. That apart, the complaint was lodged on 21-8-1995 i.e., long prior to the date of expiry of the drug which is mentioned as February 1996 on the label. If the petitioners wished to get the sample examined by a third agency, nothing precluded them from requesting the trial court to send the sample for fresh analysis. In another judgment reported in *State of Haryana v. Brij Lal Mittal* (1 supra), the apex court has held that the delay in filing the complaint till expiry of the life of the drugs cannot be a ground to quash the prosecution.

8. Insofar as the Judgment relied upon by the learned senior counsel in *State of Rajasthan v. Sanjay Kumar* (3 supra) is concerned, that case arose under Section 469(1)(b) and 468(2)(c) of the Cr.P.C. regarding the starting point of limitation. In the instant case, even according to the facts narrated by the learned counsel, the seizure was effected on 31-12-1994, the analyst report is dated 28-2-1995 and the complaint was lodged on 21-8-1995. Section 27(c) of the Act states thus -

'Any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a terms which shall not be less than three years but which may extend to five years and with fine which shall not be less than five 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 three years but not less than one year; '

9. According to Section 468(2)(c) of the Code of Criminal Procedure, the period of limitation is three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years and according to Section 469(1) of the Code, the period of limitation in relation to an offender shall commence (a) on the date of the offence; or (b) where the commission of 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. In the instant case, admittedly, the seizure was effected on 31-12-1994 and the knowledge that the drug is 'not to standard quality' came to light on 28-9-1995. Thus, even if either of the two dates - i.e., either the date of seizure (31-12-1994) or the date of analyst report (28-9-1995) is taken into consideration for the purpose of limitation, the complaint which is filed in this case is well within the period of limitation and as such it cannot be said that the complaint is beyond the period of limitation.

10. In the complaint, it is specifically averred that the procedure as laid down under Section 23 of the Act was followed on 31-12-1994 by the Drugs Inspector and as such it cannot be said that the Drugs Inspector has collected only three samples but not four samples as envisaged under Section 23(3) of the Act. The question whether three samples or four samples are to be taken is a matter of fact which is to be gone into during the course of trial by the learned Magistrate.

Similarly, the question whether the Drugs Inspector who is the complainant herein is a person notified in the gazette or not is also a matter of fact which is to be established during the course of trial by adducing evidence and it is not for this court to decide that aspect at this stage and quash the proceedings on the ground that the complainant is not competent to file the complaint as he is not a person coming within the meaning of Section 21 of the Act.

11. May be it is a fact that the petitioners who are arrayed as A3 and A-4 are not partners of A-1-firm with effect from 1-1-1995 in view of the fact that the

partnership got dissolved from that date but on that ground they cannot be exonerated of the charge now without conducting trial of the case as, on the date of offence i.e., on 31-12-1994 when the alleged seizure was effected, they continued to be the partners of the firm. Again, it is a matter of fact which has to be established by the petitioners during the course of trial of the case that it is not within their knowledge about the quality of the drug that was seized and that they are innocent of the offence alleged against them.

12. For the aforesaid reasons, I see no ground to quash the proceedings. The criminal petition is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com