State of H.P. Vs. Managing Director M/S Edifice Laboratories

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Court : Himachal Pradesh

Decided On : Jul-25-2011

Judge : Surinder Singh

Appeal No. : Cr. Appeal No. 487 of 2004

Appellant : State of H.P.

Respondent : Managing Director M/S Edifice Laboratories

Judgement :

SURINDER SINGH, J. (Oral)

1. In this appeal, the challenge is made by the State to the acquittal of the respondent passed by the learned trial Court in case No. No. 81/3 of 2000/1999 decided on 11.6.2004 under Section 18 (a) (i) read with Section 27 (d) of the Drugs and Cosmetics Act, 1940, in short ‘the Act’.

2. In short, prosecution case can be stated thus. On 30.9.1997 Drug Inspector of District Bilaspur lifted the sample of ‘Furazolidone’ tablets I.P. No. 2993 manufactured by the respondent, from the stores of District Hospital at Bilaspur. The sample was found to be of sub-standard quality by the government Analyst, Kandaghat. Respondents-firm was asked to supply the necessary record of stuff and sub-standard drugs relating to the manufacturing and testing of the drugs and to explain as to why legal proceedings be not initiated against them. Respondent firm was also supplied with the copies of the invoice by which the drug was

purchased by the Government of H.P. Although respondent supplied the testing record of the drug in question but it is alleged that the manufacturing records were not sent. The Drug Controller, H.P. advised the Drug Inspector to initiate the legal proceedings against the firm, and granted permission to launch prosecution. Accordingly PW1 Shri Ravinder Kumar Chaudhary, Drug Inspector filed the complaint Ext. PW1/O on 10.6.1999 in the Court of the learned Chief Judicial Magistrate under the aforesaid Sections.

3. The respondent was ordered to be summoned. Later it transpired that the respondent was not a company but a partnership firm thus on 28.11.2001 Drug Inspector moved an application in the trial Court supplying the address of one Shri Munish Sharma who was allegedly managing the activities of the firm and responsible for its day to day business. He was summoned. After putting his appearance he sought discharge disputing the allegations of the Drug Inspector and contended that he was neither incharge nor managing the activities, as alleged. But his request, vide order dated 17.1.1993 was declined against which he filed a petition in the High Court under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India to quash the proceedings against them, which was dismissed vide order dated 4.7.2003 passed in Cr.M.M.O. No. 39 of 2003, on the ground that prima facie, there was material on record to show that the Drug Inspector though not made a specific allegation against him but at a later date, it was brought on record that the respondent was responsible for the activities of this manufacturing firm. Accordingly, notice of accusation was put to him. He pleaded not guilty and claim trial.

4. To prove its case, complainant Drug Inspector examined himself as PW1 and also examined PW2 Sh. Rakesh Chandel and PW3 uttam Chand.

5. Accused Munish Sharma was also examined under Section 313 of the Code of Criminal Procedure. He took the stand that he was neither Managing Director of the respondent firm nor remained as a person incharge or managing the activities of the respondent firm.

6. At the end of the trial, he was acquitted by the learned trial Court.

7. Though the grounds of acquittal recorded by the learned trial Court are not at all convincing and the findings of acquittal are not based upon the evidence on record yet, on re-appraisal of the evidence on record, I find more than one reason not to interfere with the acquittal of the respondent. Admittedly, the Drug Inspector had picked-up the samples of four drugs on 30.9.1997 from PW2 Rakesh Chandel, Pharmacist, District Medicines Store out of which one was of 'furazolidone' tablet I.P bearing batch No. 2993 manufactured by the respondent and its expiry date, as mentioned in Form No. 17 Ext. PW1/B was September, 1997. The complaint was filed on 10.6.1999. As PW1 he stated that he took four samples of the said medicine in accordance with law and out of them one was given to PW2 Rakesh Chandel on the spot. Remaining three samples were taken by him to his Headquarter at Hamirpur and out of three, one was sent for analysis to C.T.L. Kandaghar against form No. 18 Ext. PW1/C by registered post and as per report Ext. PW1/F, it was found not of the standard quality as it contained Furazolidone I.P to the extent of 86.6%. On receiving the report in triplicate, he informed PW2 Rakesh Chandel vide letter Ext. PW1/G along with copy of the report. He was required to produce the bill of its purchase photocopy mark-A thereof was supplied by C.M.O. Bilaspur to him which pertained to the respondent. He further stated that thereafter he sent a letter Ext. PW1/H on 18.12.1997 to the respondent along with one part of the sample and copy of the report of the analysis by registered post but it was not responded despite reminder Ext. PW1/J. He further corresponded with the respondent and also sent photocopy of the purchase bill supplied by the C.M.O. Bilaspur. It was only then the respondent sent their reply Ext. PW1/A through their authorized signatory. But according to him, respondent did not supply the Constitution of the Firm along with manufacturing and sale record. Thereafter he submitted the entire case to the Drug Controller Shimla vide letter Ext. PW1/L and sought the permission to prosecute the respondent which was accorded.

8. Pertinently, in cross-examination, he stated that one of the samples part Ext. P1 was not produced and deposited in the Court of learned Chief Judicial Magistrate at the time of filing the complaint as it was required to be produced at the time of the evidence. He also admitted that the manufacture of the produce did not agree with the report of analyst and also stated vide Ext. PW1/K that they had got their

product tested and analyzed from their own Laboratory and also from the Government approved Laboratory. Further, he admitted that he had received two reports of the Government Laboratory from the respondent out of that one pertains prior to the taking of the sample and another thereafter. He categorically admitted that he was not in possession of the Constitution of the respondent firm nor any detail about the person incharge who was responsible for the day to day business of the said Firm. According to him, though the firm had made a request to get second part analyzed but they lost their right as the request was made after 28 days. He further stated that had the respondent been present in the Court within six months after filing the complaint and before the expiry date of the medicine, they could have got the sample analyzed from C.T.L. Calcutta, but the record shows that the complaint was filed on 10.6.1999 in the court after the date of expiry of the drug.

9. On the critical analysis of the aforesaid evidence the following salient features emerges:-

(i) One of the samples Ext. P1 was not deposited by the Drug Inspector in the Court at the time of filing the complaint. In fact he produced it during his statement after the expiry date of sample.

(ii) The respondent Firm vide their letter Ext. PW1/K clearly questioned the propriety of the report of the Government Analyst. There is also a reference that they had already given reply to the earlier letter of the Drug Inspector dated 30.12.1997 received by them which was withheld by the Drug Inspector and they reiterated that they were also sending the sample to some government Laboratory for re-testing to be sure that the said product is of standard quality. They specifically averred that they had also got tested the said drug and enclosed the reports with the letter and further made the request to get the said sample tested through a second source or some statutory authority.

10. In so far as first point is concerned, Section 23 (4) of the Act requires the Drug Inspector to restore one portion of the 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.

11. Admittedly, second part was only produced during the trial at the time of examination of the Drug inspector by that time its self-life had already expired.

12. Section 25 (3) of the Act clearly provides that the report of the Public Analyst 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 18-A] has within twenty eight days of the receipt of a copy of 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.

13. Though the Drug Inspector stated having sent the notice dated 28.11.1997 along with copy of report of analysis yet he did not produce postal receipt or any acknowledgement due to prove its dispatch so as to count 28 days from its receipt for exercising the option by the respondent to get the sample analyzed from Central Drugs Laboratory, whereas the respondent vide Ext.PW1/K have already stated having made such a request earlier and also reiterated it vide this letter, the contents whereof have not been controverted by the complainant. Further as already stated above, the respondent could not apply to Court by making the same request as the complaint was filed after the expiry of self-life of the drug. The very purpose of producing the sample Ext. P1 before the Court by the complainant after expiry date has jeopardized the exercise of the powers by the Court or also by the respondent as is required under sub-section 4 of Section 25 as discussed above. Further there is no proof of dispatch of the thread sample was sent to the respondent firm. Thus a valuable right of the accused to have the sample tested from the Central Drugs Laboratory has been denied to the accused causing

material prejudice to his defence.

14. Further it was also incumbent upon the prosecution to have filed the complaint expeditiously so that the right of the accused is not lost. The purpose of depositing the sample with the Court is clearly countenanced by sub-section 4 of Section 25 of the Act that unless the sample had already been tested or analyzed 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 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. But in the instant case neither the Court on its own motion nor the complainant applied for its analysis. He produced the said sample during the trial of the case when examined as PW1 on 26.12.2003 and, that too, when the date of the said drug had already expired. This fact, coupled with the representation of the respondent Ext. PW1/K whereby they requested to send the second part for the analysis was not adhered to. Therefore, non-compliance of the mandatory requirement by not sending the second sample to the Central Drugs Laboratory and also coupled with the fact that the requirement of sub-section 3 of Section 25 of the Act which is mandatory was not fulfilled, the acquittal of the respondent cannot be interfered with. The reliance can also be placed on the judgment of the Supreme Court in M/s Medicamen Biotech Ltd. and another Vs. Rubina Bose, Drug Inspector AIR 2008 SC 1939.

15. Further in the instant case, presence of Munish Sharma was procured on 17.2.2002 by the time, the date of the drug had also expired and it is also not shown that said Shri Munish Sharma was incharge and responsible for the day to day business of the respondent firm neither in terms of Section 34 of the Act nor there is any averment made in the complaint. Even the application moved by the Drug Inspector on 28.11.2001 wherein he alleged that Munish Sharma was managing the activities of the firm or was responsible for its day to day business

could not be substantiated by him during the trial of the case rather he frankly conceded that he does not have any document to prove this fact.

16. Therefore, for the aforesaid reasons, in my opinion, the acquittal of the respondent cannot be interfered with.

17. The appeal sans merit and is accordingly dismissed.

18. The respondent is discharged of his bail bonds entered upon by him, at any time during the proceedings of this case.