2026:PHHC:091688

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

134 **CRM-M-28121-2023**
Date of decision: 07.07.2026

M/S THERAMAX LABORATORIES & ORS. .... PETITIONER(S)

VERSUS

STATE OF PUNJAB THROUGH THE DRUGS CONTROL OFFICER BATHINDA

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akshay Jain, Advocate and
Mr. Sanjay Kumar Jain, Advocate for the petitioners.

Mr. Athar Ahmed, DAG, Punjab.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 of Cr.P.C. is for quashing of the complaint COMA No.3150 dated 13.09.2019 (Annexure P-15) titled as 'State of Punjab versus Theramax Laboratories and others' pending in the Court of Additional Chief Judicial Magistrate, Bathinda, the summoning order dated 26.07.2021 (Annexure P-16) and all other consequential proceedings arising therefrom.

2. The brief facts of the case are that an inspection was carried out at the Regional Drugs Warehouse, Bathinda, and two samples were drawn from two different batches of medicines on 16.04.2017.

One sample portion of each of the two drugs was forwarded to the Government Analyst, Punjab on 18.04.2017, and on 16.05.2017, the said Analyst declared both the sample portions as not of a standard quality.

On 01.06.2017, letters were addressed to Regional Drugs

Warehouse, Bathinda, in respect of both the samples by the Drug Inspector. Replies were furnished by the Regional Drugs Warehouse, Bathinda disclosing the name of petitioner No.1-firm on 07.07.2017.

On 25.07.2017, letters were addressed to the petitioner No.1.

Within the statutory period of 28 days, as provided under Section 25 of Drugs and Cosmetics Act, 1940, the petitioner No.1-firm vide letter dated 19/29.08.2017 (Annexures P-11 and P-12) controverted the correctness of the adverse report of the Government Analyst by adducing evidence from an independent Laboratory. Both these letters were received by the Drug Inspector on 23.08.2017 and 29.08.2017.

Instead of sending the second sample for retesting by a Central Laboratory, the instant complaint was filed on 13.09.2019 (Annexure P-15) and the petitioners were summoned under Section 18(a) (i) read with Section 17-B punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940, vide order dated 26.07.2021 (Annexure P-16).

3. The aforementioned complaint and summoning order have been challenged in the present petition.

4. The learned counsel for the petitioners *inter alia* contends that the replies dated 19.08.2017 and 21.08.2017, received by the Drug Inspector on 23.08.2017 and 29.08.2017 respectively, would amount to an intention to adduce evidence in controversion of the report of the Analyst. At that stage, it was incumbent upon the Drug Inspector to first file a complaint and thereafter send the samples for retesting by a Central Laboratory. However, the same was not done. In fact, after the expiry of the shelf life of the drugs in November/December 2018, the complaint came to

be filed on 13.09.2019, on which the summoning order came to be passed. He, thus, contends that there is a violation of Section 25(3) and Section 25(4) of the Drugs and Cosmetic Act, 1940. Reliance is placed on the judgment in the cases ***"Northern Mineral Limited vs. Union of India and another", bearing Criminal Appeal No.766 of 2003*** decided on 07.07.2010, ***"Food Inspector vs. P.S. Sreenivasa Shenoy" bearing Criminal Appeal No.545 of 2000*** decided on 19.07.2000, and ***"Parkin Laboratories (M/s.) and ors. Versus State of Rajasthan", bearing S.B. Criminal Misc. Petition No.640 of 2021*** decided on 08.03.2022.

5. The learned counsel for the State, on the other hand, contends that in the replies dated 19.08.2017 and 21.08.2017, the petitioners did not seek retesting by a Central Laboratory, and therefore, there was no requirement for the Drug Inspector to send the samples for retesting to a Central Laboratory. He was perfectly justified in filing the complaint based on the report of the Government Analyst, Punjab. He, thus, prays that the present petition is liable to be dismissed.

6. I have heard learned counsels for the parties.

7. Section 25 of the Drugs and Cosmetics Act, 1940 reads as under:-

> *"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 18-A, 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 18-A 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."

8. In ***"Northern Mineral Limited's case (supra)***, the Hon'ble Supreme Court held as under:-

> *"22. From the language and the underlying object behind Sections 24(3) b and (4) of the Act as also from the ratio of the aforesaid decisions of this Court, we are of the opinion that mere notifying the intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court with the jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that the sample be sent for analysis c to the Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to the Central Insecticides Laboratory for test and analysis.*
>
> *23. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of the Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the d Insecticide Inspector or before the court where proceeding in respect of the samples is pending. Further, the court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused.*
>
> *24. No proceeding was pending before any court when the accused was served with the Insecticide Analyst's Report, the intention was necessarily e required to be conveyed to the Insecticide Inspector, which was so done by The appellant and in this background the Insecticide Inspector was obliged to institute complaint forthwith and produce the sample and request the court to send the sample for analysis*

and test to the Central Insecticides Laboratory. The appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to the Central Insecticides Laboratory.

25. It may be mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by the Central Insecticides Laboratory. A valuable right of the g appellant having been defeated, we are of the opinion that allowing this Criminal prosecution against the appellant to continue shall be futile and abuse of the process of court."

9. In ***"Food Inspector's case (supra)***, the Hon'ble Supreme Court held as under:-

"17. Thus the stage for sending the other part of the sample to get it analysed by the Central Food Laboratory arises only during the post-institutional proceedings of the prosecution in the Court. It is the Court's function to dispatch the other part of the sample to the Director of the Central Food Laboratory. The Director shall complete the analysis within one month of the date of receipt of the part of sample and send the Certificate to the Court before which the prosecution is pending."

10. In ***"Parkin Laboratories case (supra)***, the Rajasthan High Court held as under:-

"8. As is clear from the facts narrated above, intimation in this regard had 10 been given by the

petitioners to the Inspector by letter dated 27.11.1998 and admittedly, by that date, proceedings had not been instituted in any court. regarding the drug sample in question. As per sub-clause (4) of the Section 25 of the Act, the court may, on its own motion or in its discretion, at the request either of the complainant or the accused, cause the sample of the drug 15 produced before it under sub-section (4) of Section 23 to be sent for test or analysis to the Central Drugs Laboratory. Thus, for the court to exercise powers of forwarding the second sample of drug to the Central Drugs Laboratory, prior institution of proceedings is sine-qua-non as per Section 25(3) of the Act of 1940. As per this provision, the Inspector has to produce the 20 second sample in the court before which the proceedings are instituted in. respect of the drug.

9. On going through the complaint filed by the Drug Inspector, it is clear that the second sample of the drug was not deposited in the court before its expiry date because the complaint itself came to be filed in the year 2003. By that time, the drug sample in question was 4 years past its expiration date. If at all an effective opportunity of getting the second sample examined was to be provided to any accused being prosecuted in the case, it was absolutely esseritial for the Drug Inspector to have filed the complaint in the court concerned before the expiry date of the drug in question. However, as is 30 evident, the complaint came to be filed in the year 2003, whereas the shelf life of the drug was expired in October 1999. As per Section 25(4) of the Act of 1940, the second sample of the drug can be sent to the Central Drugs Laboratory on request either of the complainant or the accused. The proposed accused, i.e. the manufacturing firm, had already intimated the Drug Inspector of its intention to

have the second drug sample reanalyzed through Central Drugs Laboratory. Admittedly, a part of the drug sample was not sent to the manufacturing firm with the report of CIPL. Thus, the Drug Inspector.could have presented the preserved part of the sample in the court concerned with a request to send the same for reanalysis to the Central Drugs Laboratory.

40 However, no such action was taken by the Drug Inspector manifestly because. no proceedings had been filed in the Court till then. Hence, it is clear that the accused petitioners were denied the opportunity to get the second sample of the drug re-analyzed through the Central Laboratories in terms of Section 25 (3) and (4) of the Act of 1940. Non sending of a part of the sample to the manufacturer is clearly in contravention of the requirement as mentioned in "Section 23(4) (iii) of the Act of 1940. In the case of Laborate Pharmaceuticals India Ltd. vs. State of Tarnil Nadu [(2018) 15 SCC 93] the Hon'ble Supreme Court considered this precise issue and observed as below:-

"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 fron the premises of the retailer had to be divided into four portions; one portion is required to be given 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 analysed 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 appellantmanufacturer 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 offences 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 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 reanalysis

> *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.*
>
> *10. Consequently and for the reasons alluded we are of the view that the present would be a fit case to interdict the criminal trial against the accused appellants. We order accordingly. Therefore, C.C.No.263 of 2015 pending on the file of the XV Metropolitan Magistrate, George Town, Chennai is hereby quashed. The appeal is allowed and the order of the High Court is set aside."*

11. A perusal of the aforementioned judgments would establish beyond doubt that once the accused has notified his intention to adduce evidence in controversion of the report of the Analyst, it is incumbent upon the Drug Inspector to first file a complaint and thereafter seek sending of the second sample for analysis by a Central Laboratory.

12. Coming back to the facts of the present case, a perusal of the letters dated 19.08.2017 and 21.08.2017 (Annexures P-11 and P-12) would establish beyond doubt that the petitioners disputed the report of the Government Analyst, Punjab stating that a private Laboratory had found the medicines to be of standard quality. Thus, by implication, it was apparent that what the petitioners were seeking was that the Drug Inspector send the second sample for analysis by a Central Laboratory.

13. For reasons best known to the respondent/Department, however, the second samples were not sent for analysis. Instead, based on the first report of the Government Analyst, Punjab, itself, the complaint was instituted on 13.09.2019, despite the fact that the shelf life of the drugs had

expired in November/December 2018, taking away the indefeasible rights of the petitioners to get the sample reanalyzed from a Central Laboratory.

14. Keeping the aforementioned facts and circumstances, I find considered merit in the present petition and, therefore, the complaint dated 13.09.2019 (Annexure P-15), summoning order dated 26.07.2021 (Annexure P-16) passed by the learned Additional Chief Judicial Magistrate, Bathinda and all the consequential proceedings arising therefrom stand quashed.

15. All the pending miscellaneous applications, if any, stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

07.07.2026
Kusum

Whether speaking/reasoned:- Yes/No
Whether reportable:- ***Yes/No***