IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 810 of 2023
Reserved on: 05.12.2023
Date of Decision: 08th January, 2024

M/S Hetero Labs Limited & others

....Petitioners

Versus

Union of India through Drug Inspector.

....Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? Yes

For the Petitioners : Mr. N.S.Chandel, Senior Advocate with Mr. Vinod Gupta, Advocate, for the petitioners.

For the Respondent : Mr. Shashi Shirshoo, Central Government Counsel.

Rakesh Kainthla,Judge

The present petition under Section 482 of Cr.P.C. has been filed for quashing of complaint no. 239/4 of 2022, pending before the learned Additional Chief Judicial Magistrate at Nalagarh, District Solan, titled Union of India versus Hetro Lab Limited. It has been asserted that the Drug Inspector, Baddi, drew sample of the drug Azilsartan Medoxomil tablet, on 15.03.2021, which was manufactured by M/S Hetro Labs Limited. The drug was sent to a

Whether reporters of the local papers may be allowed to see the judgment? Yes

Government Analyst, Regional Drugs Testing Laboratory, and Chandigarh for testing and analysis, which issued a result stating that the sample did not conform to the claim as per the patent and proprietary with respect to the dissolution. One copy of the report was delivered to the petitioner in compliance with Section 25 of the Drugs and Cosmetics Act. The petitioners got the sample analyzed at their own end and found that it complied with the requirement. A complaint was filed before the learned Trial Court. The petitioners filed an application under Section 25(4) of the Drugs and Cosmetics Act for sending the sample to the Central Laboratory, Kolkata for its analysis. The application was contested and the same was dismissed by the learned Trial Court. The matter was carried in revision before this Court and a direction was issued to send the sample to the Central Drugs Laboratory, Kolkata. A report was issued by the Central Drugs Laboratory, Kolkata stating that the drugs conformed to the manufacturer's specification with respect to the test for dissolution. The report of of Government Analyst has been superseded by the report issued by the Central Drugs Laboratory, Kolkota; therefore, it was prayed that the proceedings initiated against the petitioners be quashed.

2. The respondent filed a reply admitting that a drug sample was drawn and sent to the Government Analyst, Regional Drugs Testing Laboratory, Chandigarh. The report stated that the sample did not conform to the claim as per patent and proprietary with respect to the dissolution. The complaint was filed before the learned Trial Court. The petitioner filed a petition under Section 25(4) of the Drugs and Cosmetic Act to challenge the report of the analyst, which was dismissed. A revision was filed before this Court, which was allowed and the sample was forwarded to the Central Drugs Laboratory, Kolkota for analysis. The laboratory issued a report stating that the sample conforms to the manufacturer's specification with respect to the test for dissolution. It was admitted that as per Section 25(4), the report the test of the analysis would be conclusive evidence. Hence, it was prayed that an appropriate order be passed in the present case.

3. I have heard Mr. N.S. Chandel learned Senior Counsel assisted by Mr. Vinod Gupta, Advocate, for the petitioners and Mr. Shashi Shirshoo, learned Central Government Counsel for the respondent.

4 Mr. N.S. Chandel learned Senior Counsel submitted that the report of Central Drugs Laboratory, Kolkata superseded the report of the Government Analyst. The sample was found to be of standard quality and nothing survives for adjudication in the present complaint after this report. Hence, he prayed that the present petition be allowed and the complaint pending before the learned Trial Court be quashed.

5. Mr Shashi Shirshoo, learned Central Government Counsel admitted that as per the report of the Central Drugs Laboratory, Kolkota, the sample was found to be of standard quality.He prayed that appropriate orders be passed.

6. I have given considerable thought to the submissions at the bar and have gone through the record carefully.

7. The principles of exercising the jurisdiction under Section 482 of Cr.P.C. were laid down by the Hon'ble Supreme Court in ***Supriya Jain v. State of Haryana*, *(2023) 7 SCC 711: 2023 SCC OnLine SC 765*** wherein it was observed at page 716:-

> **"17.** The principles to be borne in mind with regard to the quashing of a charge/proceedings either in the exercise of jurisdiction under Section 397CrPC or Section 482CrPC or together, as the case may be, has engaged the attention of this

Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarised by this Court succinctly. In ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986]***, this Court laid down the following guiding principles : (SCC pp. 482-84, para 27)

> "27. ...27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
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> 27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the

stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in the exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith predominantly give rise to and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon thecritical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In the exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was the possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit a continuation of prosecution rather than its

quashing at that initial stage. The Court is not expected to marshal the records with a view to deciding the admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the chargesheet, reported under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debitojustitiae*i.e. to do real and substantial justice for the administration of which alone, the courts exist.

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27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

8. Similar is the judgment in ***Gulam Mustafa v. State of Karnataka, 2023 SCC OnLine SC 603*** wherein it was observed:-

> "**26.** Although we are not for verbosity in our judgments, a slightly detailed survey of the judicial precedents is in order. In ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, this Court held:
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> > *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> > *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> >
> > *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section*

156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

> *103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*"
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> (emphasis supplied)

9. It was laid down in ***CBI v. Aryan Singh, 2023 SCC OnLine SC 379,*** that the High Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of Cr.P.C. The allegations are required to be proved during the trial based on evidence led before the Court. It was observed:

> "**10.** From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini-trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of the trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini-trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required

to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

11. One other reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been charge-sheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried."

10. This position was reiterated in ***Abhishek v. State of M.P. 2023 SCC OnLine SC 1083*** wherein it was observed:

> **12.** The contours of the power to quash criminal proceedings under Section 482 Cr. P.C. are well defined. In ***V. Ravi Kumar*** **v.** ***State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568]***, this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In ***Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021]***, a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr. P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in ***R.P. Kapur v. State of Punjab (AIR 1960 SC 866)*** and ***State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335]***, the Court would have jurisdiction to quash the FIR/complaint.

11. It is apparent from these judgments that power under Section 482 of Cr.P.C. can be exercised to prevent the abuse of process or secure the ends of justice. The Court can quash the F.I.R. if the allegations do not constitute an offence or make out a case against the accused. However, it is not permissible for it to conduct a mini-trial to arrive at such findings.

12. It is undisputed that the fourth part of the sample was sent to the Central Drugs Laboratory, Kolkota. A report was issued by it that the sample conforms to manufacture's specifications with respect to the dissolution. Section 25(4) of the Drugs & Cosmetics Act provides that the Director of the Central Drugs Laboratory, Kolkota, shall cause the sample to be tested and such report shall be conclusive evidence of the facts stated therein. It reads as under:

> "**Section 25(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 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."

13. Therefore, it is apparent from the bare perusal of the Section that the report of the Director, Central Drugs Laboratory, Kolkota, has been made conclusive of its contents and will supersede the report of the Government Analyst.

14. It was laid down by this Court in **Elnova** ***Pharma Village Mginand & ors Vs. State of Himachal Pradesh, 2022 SCC OnLine HP 5091,*** that as per Section 25(4) of the Drugs and Cosmetics Act, the report is conclusive evidence, and the prosecution will fail or succeed based on such a report. It was observed:

> **28.** It may be noticed that as per Section 25(4) of the Act, the report of Central Drug Laboratory, Kolkata is conclusive proof of the content thereof, meaning thereby, that prosecution with a view to prove such report otherwise not required to examine the author of the report and if the same is accepted, prosecution is either bound to fail or succeed. In case the report is negative, the prosecution would fail and if the report is positive, the prosecution would succeed and the person, against whom, the report is positive, is liable to be dealt with in accordance with the law for his having contravened the provisions as referred herein above.

15. Thus, it is apparent that while the report of the analyst under Section 25(3) is evidence of the facts therein, the report of the Central Drugs Laboratory has been made conclusive evidence.

It was laid down in ***Amery Pharmaceuticals v. State of Rajasthan*, *(2001) 4 SCC 382***, that once the sample is tested by Central Drugs Laboratory and the report has been received in the Court, the conclusiveness attaches to the same. It was observed:

> **25.** In our view the court should lean to an interpretation that would avert the consequences of depriving an accused of any remedy against such evidence. He must have the right to disprove or controvert the facts stated in such a document at least at the first tier. It is possible to interpret the provisions in such a way as to make a remedy available to him. When so interpreted the position is thus: the conclusiveness meant in Section 25(3) of the Act need be read in juxtaposition with the persons referred to in the sub-section. In other words, if any of the persons who receive a copy of the report of the Government 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 Government 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 Government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other mode by which such facts can be disproved. He can also avail himself of the remedy indicated in sub-section (4) of Section 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. 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 discretion has been conferred on the court to decide whether such a 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 Section 25(4) of the Act is produced in the court the conclusiveness mentioned in that sub-section would become incontrovertible*. (Emphasis supplied)

17. In the present case, the report of the Central Drugs Laboratory, Kolkata clearly shows that the sample was found to be conforming to the standard laid down, hence, the case of the prosecution that the Drug did not conform to the standard has been falsified by the report. Since this report is conclusive, it supersedes the report of Government Analyst and is *per se* admissible without examination of the author; therefore, the complainant's version that the sample did not conform to the standard quality is falsified by the report. The continuation of the proceedings before the learned Trial Court will be an exercise in futility and will amount to an abuse of the process of the Court,

18. Hence, the present petition is allowed and the complaint bearing No. 239/4 of 2022, pending before the Court of

learned Additional Chief Judicial Magistrate at Nalagarh, District Solan, H.P. titled Union of India vs Hereto Lab Limited is ordered to be quashed qua the petitioner.

Pending application(s), if any, also stand disposed of.

(Rakesh Kainthla)
Judge

08th January, 2024.
(Ravinder)