

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2463 of 2006
Date of Decision: February 27, 2009

State of Haryana

---Petitioner

versus

Raj Kumar and another

---Respondents

Coram: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sidharth Sarup, AAG, Haryana

SABINA, J.

Chief Judicial Magistrate, Hisar, vide order dated 15.1.2004 ordered that charge be framed against the respondents as well as their co accused under Section 27(a), 27(d) 28(a), 28(b) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as “the Act”).

Brief facts of the case as noticed by the appellate court in para 1 and 2 of its judgment, are as under:-

“Succinctly stated, the facts of this case are that on 7.8.1990 Sh. G.L.Singhla District Drugs Inspector, Hisar (for short DDI) visited the premises of M/s Naresh Medical Agencies, Hisar in the presence of Lalit Kumar, partner and competent person and

took samples of the following two drugs in accordance with law.

i) 8 X 540 ml. Sodium chloride injection IP Batch No. 1725-B Expiry July 1991 Mfg. M/s Mitson Pharmaceuticals Pvt. Ltd. Sibian(Punjab).

ii) 8X 54-0 sodium Chloride injection IP, Batch No. 1724-B Expiry July 1991 Mfg. M/s Mitson Pharmaceuticals Pvt. Ltd. Sibian(Pb.)

2. On being analysed by the Govt. Analyst, Haryana Chandigarh both the drugs were found to be not of the standard quality adulterated and misbranded within the meaning of sections 16, 17 and 17-A of the Drugs and Cosmetics Act, 1940 (for brevity the Act). Accordingly, the DDI issued notice to Naresh Medical Agencies, who disclosed that they had purchased the said drugs from M/s Ajay Medical Agencies, Hisar. Then a notice was sent to M/s Ajay Medical Agencies, Hisar in response to which Raj Kumar, Proprietor-cum-competent person of M/s Ajay Medical Agencies, Hisar disclosed that they had purchased the said drugs from M/s National Distributors, Sirsa. The DDI then contacted and served show cause notice on M/s National Distributors, Sirsa and then its partners Raj Kumar and Rajinder Kumar disclosed that they had purchased the said drugs from M/s National Mitson Pharmaceuticals Ltd. Sibian, District Bhatinda. The DDI accompanied by Senior

Drug Inspector, Rohtak and Drug Inspector, Bathinda visited M/s Mitson Pharmaceuticals Ltd. and met Rajesh Mittal son of Brij Lal Mittal who claimed himself to be the Managing Director of the said M/s Mitsons Pharmaceuticals Ltd. and admitted in the presence of Ashok Kumar Bhadlia and Pardeep Sharma that the drugs in question were manufactured and sold by them. He also disclosed the names of other Directors and Manufacturing Chemist and Analytical Chemist of M/s Mitson Pharmaceuticals Ltd.”

Respondents have moved an application under Section 245 of the Code of Criminal Procedure for discharge. The said application was dismissed by the trial court vide order dated 21.10.2005. Aggrieved, by the same respondents preferred a revision petition and the same was allowed by the Additional Sessions Judge, Hisar vide order dated 1.2.2006.

Learned State counsel has submitted that at the time of framing of charge, only a prima facie case was to be seen against the accused. All the pleas available to the respondents could have been taken by the respondents in their defence.

Section 19(3) of the Act reads as under:-

“19(3)A person, not being the manufacture of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves-

- (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

- (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and
- (c) that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.”

The case of the respondents was that they were not manufacturers of the recovered drugs. Respondents had purchased drugs from licenced manufacturers -M/s National Distributors, Sirsa after exercising due diligence. They had stored the drugs properly and were in the same condition at the time when the samples were drawn by the District Drugs Inspector. Respondent No. 1 is admittedly a licenced dealer and is proprietor of respondent No. 2. As per provisions of Section 19(3) of the Act, respondents were required to purchase the drugs from licenced manufacturers or licenced distributor or dealers by exercising due diligence and were required to store the drugs in proper condition and in the prescribed manner.

In these circumstances, protection of Section 19(3) of the Act was available to the respondents. Learned Additional Sessions Judge, has, thus, rightly allowed the revision petition and discharged the respondents. The impugned order suffers from no infirmity and calls for no interference.

Accordingly, this criminal revision petition is dismissed.

**(SABINA)
JUDGE**

