

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**561-A Cr.P.C. No. 44/2003**

Date of Decision:23.04.2009

Vijay Chowdhary & anr v. State and Ors.

**Coram:**

**MR. JUSTICE J.P.SINGH, JUDGE.**

**Appearing Counsel:**

For Petitioner(s) : Mr. B. B. Kotwal, Advocate

For Respondent(s): None.

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|-----|---|------|
| i)  | Whether to be reported<br>in Press/Journal/Media: | Yes. |
| ii) | Whether to be reported<br>in Digest/Journal :     | Yes. |

A sample of tablet Serase-5, batch No. TS-103, manufactured by M/S QP Pharmachemb Pvt. Ltd, Derra Bassi (Punjab), bearing manufacturing date 6/99 and expiry date 5/2002, lifted by Mr. Parvez Ahmed Bhat, Drugs Inspector (HQ) from the premises of M/S New Suraj Transport Agency Srinagar, from the consignment of M/S Wani Traders, Pharmaceutical Distributors, Gaw Kadal, Srinagar, on its analysis, by the Central Indian Pharmacopoeia Laboratory Gaziabad, was found to be spurious in terms of its Report No. CIPL/6031/38 dated 14.01.2002.

State through its Drugs Inspector (HQ) Srinagar, filed a complaint in this regard, before learned Judicial Magistrate First Class (Sub Registrar) Srinagar, who on finding a prima facie case for commission of the offence punishable under

Section 27(c) of the Drugs and Cosmetics Act, issued Process against the functionaries of M/S QP Pharmachemb Pvt. Ltd, Derra Bassi (Punjab).

Vijay Choudhary and Anil Berry, the Director and the Managing Director of M/S QP Pharmachemb Pvt. Ltd, Derra Bassi (Punjab), have approached this Court seeking quashing of the proceedings, or in the alternative, the transfer of the complaint for its trial by any Court of competent jurisdiction at Jammu.

Petitioners ~~ya~~ learned counsel referred to the provisions of Section 33-G(4) of the Act to urge that in the absence of any notification by the Government, learned Magistrate ~~to~~ order, taking cognizance of the offence punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940, was unwarranted and without jurisdiction. He next contended that the company had not been provided information about the seizure of the Drug manufactured by it and had thus been deprived of its right to get the sample re-examined by the Central Drugs Laboratory. Pleading violation of the provisions of Section 23(4) of the Act, learned counsel submitted that the proceedings initiated against the petitioners need to be quashed.

Yet another point urged by the learned counsel is, that in the absence of any allegation in the complaint, that the petitioners were in-charge of the Company at the time when the alleged offence was committed, and were responsible to the Company for

the alleged offence, initiation of process against the petitioners was unwarranted.

Supporting petitioners' alternative plea for transfer of the complaint, learned counsel submitted that it would be highly inconvenient and cumbersome for the petitioners to spend four/five days, on each and every date of hearing, to attend the Court at Srinagar, from their present location at Chandigarh, and in these circumstances, fair trial of the petitioners warrants transfer of the complaint from the Court of Sub-Registrar Judicial Magistrate 1st Class, Srinagar to any Court of competent jurisdiction at Jammu.

The case was heard in ex-parte as none had appeared for the respondents to contest the petition.

I have considered the submissions of learned counsel for the petitioners and gone through the judgments, cited by him in support of his submissions.

Petitioners' first plea that prosecution could not have been launched without previous sanction of the Authority specified under sub-section (4) of Section 33-G of the Drugs and Cosmetics Act, 1940, is found to be misconceived, in that, this Section does not contemplate issuance of any Sanction before launching of prosecution. Prior Sanction for launching prosecution is, on the other hand, contemplated by Section 33-M of the Act, which would have, however, no application to the facts of the present case because the prior Sanction

contemplated by the Section pertains to the prosecution of the offences appearing under Chapter IV-A of the Act and not for the offence punishable under Section 27(c), which falls in Chapter IV of the Act.

His contention is accordingly rejected.

In view of the material placed on records by the complainant, I do not find any merit in petitioners' other contentions too relating to the violation of the provisions of the Act, in so far as following of procedure prescribed in the Act for taking samples and complying with other requirements of the Act, before launching prosecution for commission of offences punishable under Chapter IV of the Act, are concerned. This is so because the material placed on records by the complainant does not indicate any prima facie violation of the provisions of the Act which are required to be complied with before launching of prosecution under the provisions of the Drugs and Cosmetics Act, 1940, and the petitioner has not placed any such material on records on the basis whereof his plea about the violation of the provisions of the Act may be sustained.

I, however, find substance in petitioners' last contention that neither is there any statement in the complaint nor any material on records accompanying the complaint indicating that the petitioners were, in-charge of, and were, responsible to the Company, for the conduct of business of the Company, and were thus, as such, liable for commission of the

offence by the Company, in terms of Section 34 of the Drugs and Cosmetics Act, 1940.

For all what has been said above, I am of the view that continuance of proceedings on the respondent's complaint against the petitioners, in the absence of any allegation against them in the complaint or appearing from the material on records, of their being in-charge of, and responsible to the Company for the conduct of its business, would amount to abuse of the process of court.

Accordingly, allowing the petition, proceedings initiated on respondents' complaint against the petitioners by learned Judicial Magistrate (Sub Registrar), Srinagar, are quashed.

**(J.P.Singh)**  
**Judge**

**JAMMU:**  
**23.04.2009**  
*Anil Raina, Secy.*