

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

O R D E R

S.B. CRIMINAL MISC. PETITION NO.4/2014
State of Rajasthan V/S Dr. S. Mohan

Date of order : 31.03.2014

PRESENT

HON'BLE MR. JUSTICE VIJAY BISHNOI

Mr. M.S. Panwar, Public Prosecutor.

BY THE COURT:-

This Criminal Misc. Petition under Section 482 Cr.P.C. has been filed by the State of Rajasthan against the judgment dated 12.06.2013 passed by the Session Judge, Sirohi (hereinafter referred to as 'the revisional court') in a revision petition filed by the respondent.

Brief facts of the case are that on 24.11.1993 Drug Inspector has inspected the firm M/s. Laxmi Medicos, Jawal and found dry syrups of Compilox 4X2X40 ml (Ampicillin & cloxacillin for oral suspension). The Drug Inspector has seized the said dry syrups and out of which samples were taken out and sent for analysis. As per the analysis report the

samples were found to be of sub standard. On the basis of the said allegations complaint was filed against the respondent and other co-accused persons for violation of Section 18(a)(i)/27(d) read with Section 16, 17(c)/ read with Section 18(a)(i)/27(d), 17(i)(F) read with Section 18(a)(i)/27 (b), 17(B)(d) read with Section 18(a)(i)/27(c), 18(a)/28, 18(B)/28A, 22(1)(cc)/22(3) of Drugs and Cosmetics Act, 1940 and the charges framed against the respondent and evidence of some of the accused persons have already been recorded.

During pendency of the trial an application was filed on behalf of the respondent under Sections 25 and 34 of Drugs and Cosmetics Act, 1940 before the Chief Judicial Magistrate, Sirohi (hereinafter referred to as 'the trial court') however the same has been dismissed vide order dated 10.01.2011.

Being aggrieved with the order dated 10.01.2011 the respondent has filed an revision petition which was accepted by the

revisional court vide impugned judgment and it is ordered that he discharged from the offence punishable under Sections 27(b), 27(c), 27(d) and Section 28 read with Section 18(a), 28(a) read with Section 18(b), Section 22(3) read with 22(1) Drugs and Cosmetics Act, 1940.

Being aggrieved with this the State has filed this Criminal Misc. Petition. Learned Public Prosecutor has submitted that the revisional court has erred in accepting the revision petition filed by the respondent because the same is filed at very belated stage when the evidence of many of the prosecution witnesses have been recorded and the trial is likely to be completed within a short time. Learned Public Prosecutor has also submitted that even though if the notice for second sample for analysis was sent after the date of expiry of the drug the same cannot be made a ground for discharging the accused from the offences for which he was charged. Learned Public Prosecutor has therefore, prayed that the judgment passed by

the revisional court is not sustainable in the eye of law and same is liable to be quashed.

Heard learned Public Prosecutor and perused the impugned judgment.

The revisional court has found that the Drugs Inspector has collected samples on 24.11.1993 and the respondent was received notice on 04.07.1994 for the purpose of sending second samples to the Central Laboratory. The revisional court has observed that the drugs recovered and sent for samples was already expired in May 1993 and, therefore, there was no purpose for sending the notice for second samples when the drugs has already been expired. The revisional court after taking into consideration the judgment passed by the Hon'ble Apex Court in *State of Haryana Vs. Unic Farmide Pvt. Ltd. & Ors.* reported in 1992(2) FAC 399 and the judgment passed by this Court in *M/s. Cadilla Health Care Ltd. Vs. State of Rajasthan* reported in RLR 2007(1) (Raj.) 389, has passed the impugned order. The revisional

court has also observed that all the other co-accused persons has already been discharged by the trial court.

After going through the impugned judgment and after taking into consideration the fact that all the other co-accused persons have already been discharged by the trial court, this Court is of the opinion the revisional court has not committed any illegality in passing the impugned judgment after relying on the judgments of the Hon'ble Supreme Court and of this Court wherein it is held that the accused has not got the opportunity of getting second sample analysed because the same was sent much after the expiry date of the drug.

Hence, there is no force in this Criminal Misc. Petition and the same is hereby dismissed.

[VIJAY BISHNOI],J.