

CR 1018/14

APC

RBL.RP-69

Form No.3(Criminal)
Order Sheet
Ch. VIII R.I.(1) 18,20(2)
Ch. VII R.3

GOVERNMENT OF KARNATAKA
ORDER SHEET

IN THE COURT OF THE SPECIAL COURT
(ECONOMIC OFFENCES), BANGALORE.

Crl.Misc. 8 /2013

CC 291/2014

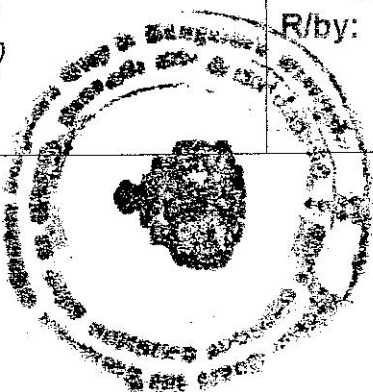
COMPLAINANT

The Drugs Inspector,
O/o the Asst. Drugs Controller,
Palace Road, Bangalore.

RESPONDENT/ACCUSED

- 1.M/s.Surien Pharmaceuticals (P) Ltd.,
Kovur-602 101.
- 2.R.Krishnamoorthy, M.D.,
- 3.C.Anbazhagam, Competent Technical staff &
Mfg. Chemist of A-1.
- 4.N.Santhi, Competent Technical staff &
Analytical Chemist of A-1.

Date 1	Order Or proceeding with Signature of the Presiding Officer 2
<p>02/08/2013</p> <p>Checked TBL Shr. 3/8/13</p> <p>Issued 5/8/13</p>	<p>The Drugs Inspector, O/o the Asst. Drugs Controller, Bangalore filed an Application u/s 470(3) of Cr.P.C. prays for to condone the delay, along with filed complaint under sec.200 of Cr.P.C., against the accused for the offence Under sec.18(a)(i) & punishable U/s 27(d) of Drugs & cosmetic Act, 1940.</p> <p><u>Order</u> Check & Putup.</p> <p>Sd/- P.O. 02-8-2013.</p> <p>Issue Notice to the Respondent/Accused R/by: 30-09-2013.</p> <p>P.O. 3-8-13</p>



CMS 00/2015

30/9/2013

Petition by DI
Respt - 100, A-2 to 4

Notice to respt.

- Sol. G.O.D.N filed
power for A-1 & 2,
M/A for A-3 & 4.
Await report
from L.D.L

21/12/13

Petr - DI

Respt - Co.

R 3 to 4 - M/A

R 1 & 2 - GDR

Await report

31/1/14

Petr - DI

Respt - Co.

R 1 & 2 - GDR

R 3 to 4 - M/A



- Respondent
NO 1 to Co.,
R 3 to 4 abt
await report

1.3

P.O. is on Leave
Hence Case is Adjourned to 31/1

20
21/12/13

30.9.13

2.12

C. Plin. 8/13

1/3/14

pebr - DE

R1 - Co.

R2 - GDR

R3 & 4 - M/A

Await report.

— Await report - 22.3

1.3.14

22/3/14

pebr - DE

R1 - Co.

R2 - GDR

R3 & 4 - M/A

Await report from CDL

— permed record,
petition is to
undone deler us.
— ~~Await report~~ ✓
fin of complant
Hence. in
notice E.O. responded
NO 1 & 2 x/b

— 5.4.14

21.3.14

note issued
to R1 & R2
28/3/14

5/4/14

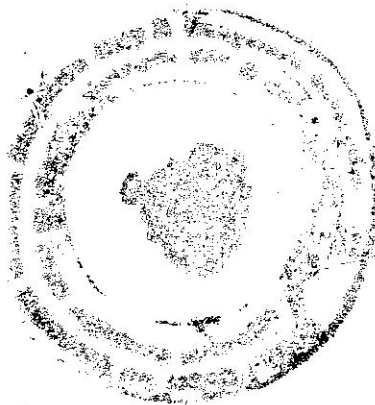
pebr - DE

R1 - Co.

R2 - GDR

R3 & 4 - M/A

note to report
lined



— Await R1 & 2

3.5.14

15.4.14

-2014

Relv. - DI

Respt - Co

R1 & 2 - EDR

R3 & 4 - ~~MANOR~~ (M/A)

Await notice of R, & R₂

[Signature]

Advocate for
CRO Point

0

9/5/14

Relv. - DI

Respt₂ - CO

R1 & 2 hdn

-3 & 4 - hdn (m/A)

Await Notice of Advocate.



C Min - 08/2013

R1 is CO,
A 2 to u about,

~~Await notice~~

R1 & 2 is represented
by Sri. G. A. R.
So in ~~the~~ notice
to advocate
to appear

Chiller - 9.5

3.5.14

- R1 is CO,
A 2 to u about,
their counsel
present, prays
time to
file objections

8-14

Petr - DI

• R₁ - Co

R₁₂₂ - EDR

R₃₂₄ - EDR (M/A)

For objus

R₁ is co.,

A₂ to 4

also

objects

plus. TO

near — 2.8

1.8-44

2/8/14

Petr - DI

R₁ - CO

R₁₂₂ - GDR

R₃₂₄ - GDR (M/A)

TO near

- A₁ is co.,
A₂ to 4 also,



2.8.14

ORDERS ON APPLICATION U/S.470(3) OF CR.P.C.,

1. This application is filed by complainant/petitioner Drugs Inspector Office of the Assistant Drugs Controller, Place Road, Bangalore for condoning the delay in filing the complaint u/s.200 of Cr.P.C., against A.1 to 4 on the grounds that on 14.10.2009 the then Drugs Inspector, Bangalore Circle-1, Bangalore, C.W.2-Sri.R.Parashuram had drawn sample of drugs C-DOX-200, Cefpodoxime Tablets U.S.P. B.No.CDT-001, labeled as D/M:01/2009, D/E:12/2010 labeled as manufactured by A.1 firm for the purpose of test/ analysis under Form No.17

from M/s.Shince Pharmaceuticals Pvt., Ltd., Bangalore, by following procedure contemplated u/s.23 of the Drugs & Cosmetic Act, 1950. One sealed portion of drawn sample was issued to Sri.Sharan Kumar S.M., Competent person of M/s.Shince Pharmaceuticals Pvt., Ltd., by obtaining acknowledgement of C.W.2, as no columns besides it.

2. On the same day C.W.2 had sent one sealed portion of sampled drugs to the Government Analyst, Bangalore, Karnataka, under Form No.18. On 27.5.2010 C.W.2 had issued a notice u/s.18A & 18B to C.W.3 along with original Test report in Form No.13 calling purchase & sales details. C.W.3 replied along with purchase and sales details on 28.5.2010 that he has purchased the same from M/s.Shince Pharmaceuticals Pvt., Ltd., Chennai. On 31.5.2010 C.W.2 had sent the original test report in Form No.13 along with one sealed portion to M/s.Shince Pharmaceuticals Pvt., LTD., Chennai, through registered post under the acknowledgement due.

On 14.5.2010 C.W.2 sent an interim report to the Drugs Controller, for the State of Karnataka, seeking permission to

2.8.14

visit the manufacturing firm along with Asst. Drugs Controller, Bangalore Circle-1 for investigation. On 15.3.2011 C.W.4 issued a letter addressed to Director of Drugs Control, No.359, DMS Complex, Anna Salai, Tanaypet, Chennai, requesting for Co-operation in the investigation. On 19.1.2012 Complainant C.W.1-Manjunatha Reddy along with C.W.4-Dilip Kumar visited M/s.Shince Pharmaceuticals Pvt., Ltd., Chennai and carried out the investigation, they handed over documents along with purchase details which has disclosed that they purchased the drugs from M/s.Shince Pharmaceuticals Pvt., Ltd., Chennai, on 9.1.2012. C.W.1 along with C.W.4 visited the said Pharmaceuticals, they confirmed the said drugs is not manufactured by them.

4. On 11.2.2013 C.W.1 reported the same to the Drugs Controller. On 20.2.2013 representative of firm handed over personally MOA & AOA of A.1 firm along with covering letter to C.W.1. On 6.3.2013 C.W.1 submitted a final report to the Drugs Controller & obtained sanction on 24.7.2013 to prosecute the case against A.1 to 4. But all those samples were drawn on 14.10.2009, the knowledge of commission of offence was known only on 28.1.2009 when the test report of the Government Analyst, (Bangalore) Karnataka in Form No.13 is received, the period of limitation starts from the day on which the report of the Analyst was received and not from the date of taking samples. Thus, Sec.469(1)(b) would be attracted. U/s.27(d) of the Act, punishment prescribed is imprisonment for a term, which shall not be less than one year but which may extend to two years and with fine, hence the period of limitation is 3 years from the date of knowledge of offence. With this prays to condone the delay and to take cognizance.



2-8-14

5. Other side filed objection contending that S.27(d) is punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine. S.468(1) of Cr.P.C., provides

No court shall take cognizance of an offence of the category specified in S.2 (after expiry of the period of limitation.

(ii) The period of limitation shall be"

a) Six months if the offence is punishable with fine only;

b) One year if the offence is punishable with imprisonment for a term not exceeding one year;

c) Three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

6. The Drugs Controller, (State of Karnataka, Bangalore) had issued sanction order on 24.7.14 to prosecute against the accused company and its Managing Directors. After three years from the date of test report i.e., Form No.13 dated 27.5.2010, the complaint is filed on 2.8.2013 which is beyond 3 years from the date of test report. So application cannot be allowed, the complaint is barred by time. With this grounds prays to dismiss the complaint.

7. Heard, perused the entire records, the points that arise for my consideration are :

Point No.1: Whether the complaint is barred by limitation?

Point No.2: What order?

8. My findings on the above said points are as under:

Point No.1: In the Negative.

Point No.2: As per the final orders for the following:

2.8.14

REASONS

9. Point No.1: Sec.468 of the Cr.P.C., reads as follows:

"S.468: Bar to taking cognizance after lapse of the period of limitation:-

(2) The period of limitation shall be-

a) Six months, if the offence is punishable with fine only;

b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

10. Admittedly, the offence alleged in this Section is u/s.27(d) of the Drugs & Cosmetic Act, which is punishable with

imprisonment for a term which shall not be less than one year but which may extend to two years and with fine.

11. According to complainant, the date of knowledge of offence is 27.5.2010 i.e., issuance of Form No.13. It is also case of the complainant that the limitation commence from the date of knowledge of offence, the complaint is within time from the date of such knowledge. The complainant also refers

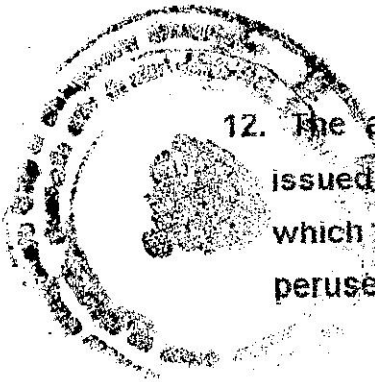
S.469(1)(b) which reads as follows:

"S.469(1)(b) Commence of the period of Limitation:-

a) on the date of the offence; or

b) Where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier "

12. The accused persons do not dispute that Form No.13 is issued on 27.5.2005, but they say complaint is filed on 2.8.2013 which is beyond 3 years from the date of test report. I have perused, it is true that the complaint is dated:2.8.2013 which



2.8.14

is beyond 3 years from the date of test report. However,
S.470(3) of Cr.P.C. reads as follows:

S.470(3): Exclusion of time in certain cases:-

3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

13. This clearly shows the period between applied for sanction and obtained should be excluded while computing limitation.

Here in this case, the test report is dated: 27.5.2010, applied for sanction on 6.3.2013 which is within 3 years from the date of obtaining report/Form No.13. The sanction is obtained on 24.7.2013, the complaint is filed on 2.8.2013 within one week from the date of obtained sanction. This shows the complaint is within time. Even if it is taken that the complaint is delay, the delay is for obtaining sanction which is satisfactory & reasonable ground. Thus, I hold that the complainant has made out a prima facie case to condone the delay & hence I answer point No.1 in negative.

14. Point No.2: In view of my findings on Point No.1, I proceed to pass the following order.

ORDER

The application filed u/s.470(3) of Cr.P.C., is allowed.

The cognizance is taken against the accused No.1 to 4 for the offence punishable u/s.27(d) of Drugs & Cosmetic Act, 1940.



2-8-14

CC-291/2014

Case No. 8-13

6

The Office is hereby directed to register the case against accused No.1 to 4 and issue summons to accused No.1 to 4.

be registered
29/1/14
02/08/2014
and
13/8/14

R/by: 12.09.2014
Presiding Officer.
12/9/14

Comp 17.02

A1 - CO
Hence Case is Adjourned to
A2 TO H - UDR
A/s not 8.2d.

31/10/14

Comp 17.02

A1 - CO
A/s not 8.2d 1 TO H.

A1 TO CO.

A2 TO H

Wait

agreed

now

they are
ready to
stand still



hence call again

P. G. V

1) A-1 is Co., A-2 to 4 present. Ld. Counsel Sri. GDR filed 31.10.17
appln. U/s.252 of Cr.pc and affidavit. Ld. Sr. APP present and
Mr. Omkareshwar, D.I is present.

2) Plea is recorded after explaining the accusation to the
accused in the language known to them. The accused-2 to 4
pleaded guilty voluntary in the presence of counsel, hence
convicted.

3) Heard on sentence, the accused submits that they are law
abiding citizen, the drug in question is though not of standard
quality, not a spurious, not adulterated, not injurious to health, not
mis-branded, but drug has failed only in assay test i.e there was no
uniformity in weight. They have got dependents. If they are
punished with imprisonment available under statue their
dependents would put to hardship, that accused-2 is running a
drugs company where 50 members are working, if he is punished
with maximum imprisonment of 2 years available under statue not
only dependents of accused but also their employees, their family
members would come to street, for the act done by accused
persons others would becomes victims, that A-3 & 4 were paid
employees.

That A-3 has got two small kids, his wife is house wife, not able to
work outside as not qualified sufficiently, he is sole bread earner of
his family. If he is punished with maximum imprisonment of 2 years
available under statue his family members would come to street,
They may be given an opportunity to be a Law abiding citizens in
future.

That A-4 is female, that she has got two children, her family is
depending on her earnings, small children are under her care, if

31.10

she is sent to jail, her two children become orphans. With these all accused persons prays to take lenient view.

4) Ld. Sr.APP and D.I do not disputes these facts. However submits that maximum punishment may be imposed on the grounds reasons are not satisfactory.

5) I have perused, Accused persons are not reported to be habitual. First time they have committed offence even according to prosecution. The drugs in question is though not of standard quality not a spurious, not adulterated, not injurious to health, not mis-branded, but drug has failed only in assay test i.e there was no uniformity in weight. There is no complaints from public as to this drug caused any injuries to health. On oral enquiry also it appears accused persons do not repeat the offence in future and they have realized their mistake.

6) It is not in dispute that accused-1 is running a drugs company where 50 members are working. As same A-3 & 4 were paid employees under A-1 and have got dependents including small kids depending on their earnings.

7) Of course, on these grounds if lenient view is taken the rate of offence may increase, however as there is no likelihood of repeating offence and as the intention of Law makers in framing Law as to punishment is to reform the accused persons and not to make them really suffer, considering facts and circumstances of the present case lenient view is requires to be taken. For these reasons I hold that taking lenient view would meet the ends of Justice. ~~It is pertinent to note that since A-1 is the company cannot be sentenced to undergo imprisonment. However may be sentenced by imposing fine.~~ With these I proceed to pass the following

31-10

ORDER

to 4 ✓
Accused-2 on admission is convicted ~~on behalf of him~~
and also on behalf of A-1 company is convicted. A-3 & 4 on
~~admission are convicted and~~ A-2 to 4 are sentenced to
undergo SI till raising of the court and further directed to pay
fine of Rs.30,000/-each for the offence U/s.18(a)(i),
p/u/s.27(d) of D & C Act, l/d to undergo S.I. for 6 months.
The bail bonds stands cancelled.

A-1 is Co., A-2 is representatives of company, he is
convicted. A-2 is responsible for day to day affairs of the
company as on the date of offence. It is submitted by A-2
that for all intents and purposes at the time of offence he is
liable for the offence, he is not separate from the firm and
the firm is not separate from him. So it is not necessary to
convict A-1 separately. A-2 is already convicted hence case
closed.

The complainant is directed to dispose off the
property after the appeal period in accordance with Law.

Accused persons are ready to undergo imprisonment
and to pay fine. The office is hereby directed to execute
sentence and receive fine.

Pur Ar ✓
31.10.14
PRESIDING OFFICER.

Undergone TNE

Pur Ar ✓
31.10.14
Presiding Officer
(Special Court)

*Need fine of
Rs.30,000/- each from
A-2 to 4 by way of
fine for the offence
U/s.18(a)(i), p/u/s.27(d)
of D & C Act, l/d to
undergo S.I. for 6 months.
667736 to 667739
31/10/14
Gmt
cbh
Nmmi*

DCF Q.RNO $\frac{0.20955}{13.44\%} = 0.5$

[illegible]

TRUE COPY

CHRISTEDAN

13 / 11 / 2014