

ITEM NO.50

COURT NO.4

SECTION IIC

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 6453/2016
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 06/07/2016
IN CRLOP NO. 9252/2016 PASSED BY THE HIGH COURT OF MADRAS)

LABORATE PHARMACEUTICALS INDIA LTD AND ORS PETITIONER(S)

VERSUS

STATE OF TAMIL NADU RESPONDENT(S)
(WITH INTERIM RELIEF AND OFFICE REPORT)

Date : 20/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. V . Giri, Sr. Adv.
Mr. Nikhil Goel, Adv.
Ms. Naveen Goel, Adv.
Mr. Ashutosh Ghade, Adv.

For Respondent(s) Mr. Subramonium Prasad, Sr. Adv.
Mr. M. Yogesh Kanna, Adv.
Ms. Nithya, Adv.
Mrs. Mahalakshmi, Adv.
Mr. Partha Sarathi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.364 OF 2017
(Arising out of SLP (Crl.) No.6453/2016)

Laborate Pharmaceuticals India ... Appellant(s)
Ltd. & Ors.

Versus

State of Tamil Nadu ... Respondent(s)

O R D E R

1. Leave granted
2. We have heard the learned counsels for the parties.
3. This appeal is directed against the order of the High Court of Madras dated 6th July, 2016 by which the criminal proceeding against the appellant-company and its directors (appellant nos.1 to 5) and appellant no.6 - Vice President (Operations), person responsible for conduct of business has been refused to be interdicted by the High Court in exercise of its power under

Section 482 of the Code of Criminal Procedure, 1973.

4. The facts lie in a short compass and have to be noticed as the same would be determinative of the legal issues that having been raised in the present appeal.

5. A sample of Cherry Lab Cough Syrup was taken on 5th September, 2011 from the medical shop of one S.Serumathi, a retailer. One part of the said sample was sent for analysis by the Government Analyst who submitted a report dated 27th January, 2012 to the effect that the sample did not conform to the standard quality.

6. A show cause notice was sent to the appellant no.1-Company on 22nd March, 2012 along with a copy of the report of the Government Analyst. The appellant sent its reply on 14th May, 2012. In the said reply, the appellant-Company did not contest the findings of the Government Analyst and also did not indicate that it was proposing to adduce evidence contrary to the report of the

Government Analyst. While the matter was so situated, on 10th August, 2012 the appellant received a part of the sample from the Drug Inspector which was sent by it to a private laboratory for analysis. On receipt of the report from the private laboratory which was inconsistent with the report of the Government Analyst the appellant indicated that it would like to adduce contrary evidence and to have the sample in the custody of the Court retested and re-analysed by the Central Drug Laboratory, Kolkata. This was on 13th September, 2012. The said request was refused on the ground that under the provisions of Section 25(3) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act"), the manufacturer was required to exercise the aforesaid option within 28 days from the date of receipt of the show cause notice i.e. 22nd March, 2012 and that the request made in the present case was belated. The High Court took the view that such exercise

of option by the appellant was beyond the time contemplated by the provisions of the Act and there is no infirmity in the prosecution which has to be brought to its logical conclusion. Aggrieved this appeal has been filed.

7. A reading of the provisions of Section 23(4) and 25 of the Act would indicate that in the present case the sample having been taken from the premises of the retailer had to be divided into four portions; one portion is required to be given to the retailer; one portion is required to be sent to the Government Analyst and one to the Court and the last one to the manufacturer whose name, particulars, etc. is disclosed under Section 18A of the Act. In the present case, admittedly, one part of the sample that was required to be sent to the appellant (manufacturer) under Section 23(4)(iii) of the Act was not sent. Instead, what was sent on 22nd March, 2012 was only the report of the Government Analyst. When the part of the sample

was not sent to the manufacturer, the manufacturer could not have got the same analyzed even if he wanted to do so and, therefore, it was not in a position to contest the findings of the Government Analyst. In the present case, the sample was sent to the appellant-manufacturer on 10th August, 2012 and on 13th September, 2012 the appellant had indicated its desire to have another part of the sample sent to the Central Laboratory for re-analysis. This was refused on the ground that the aforesaid request was made much after the stipulated period of 28 days provided for in Section 25(3) of the Act.

8. The cognizance of the offence(s) alleged in the present case was taken on 4th March, 2015 though it appears that the complaint itself was filed on 28th November, 2012. According to the appellant the cough syrup had lost shelf life in the month of November, 2012 itself. Even otherwise, it is reasonably certain that on the

date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory.

9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analyzed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4) (iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of

the view that as on date the prosecution, if allowed to continue, would be a lame prosecution.

10. Consequently and for the reasons alluded we are of the view that the present would be a fit case to interdict the criminal trial against the accused appellants. We order accordingly. Therefore, C.C.No.263 of 2015 pending on the file of the XV Metropolitan Magistrate, George Town, Chennai is hereby quashed. The appeal is allowed and the order of the High Court is set aside.

.....J.
(RANJAN GOGOI)

.....J
(NAVIN SINHA)

NEW DELHI,
FEBRUARY 20, 2017.