HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No.1657/2021

M/s Vivek Pharmachem (India) Ltd., N.H. 8, Chimanpura, Amer, District Jaipur-303112 Through Its Authorized Singnatory And Director Mr. Kuldeep Gupta Son Of Shri Rajkumar Gupta.

----Petitioner

Versus

1. State Of Rajasthan, Through P.P.
2. Drugs Control Officer, Khelri Phatak, Kota

----Respondents

For Petitioner(s) : Mr. Tarun Kumar Mishra, Adv.
For Respondent(s) : Mr. Atul Sharma, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

Reportable

12/05/2022

The background leading to this petition under Article 226 of the Constitution of India is that the Drug Inspector sent a notice to the petitioner on 23.12.2020 stating therein that certain Drugs were seized from the Drug Store Community Health Centre, Kota and the house keeper informed that he had procured the said Drugs from the District Drug Wharehouse, Kota and DDW informed that the petitioner is manufacturer of the said Drugs. The Inspector informed to the petitioner that the Drugs were not of standard quality, for the reasons mentioned in the notice. A copy of the notice is at Annexure-4.

The petitioner filed an application before the Chief Judicial Magistrate, Kota for supplying one portion of the sample of the Drugs out of total four samples required to be prepared in view of

the provisions of Section 23(3) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act").

Learned counsel submits that the four sets of samples, were to be acted upon as provided in Section 23(4) of the Drugs and Cosmetics Act. From the notice at Annexure-4, it is evident that the District Drugs Warehose, Kota, disclosed under Section 18A of the Act that the Drug was procured from the petitioner. Therefore, the law under Section 23(4)(iii) read with Section 18A of the Act, requires that the petitioner should be provided with one set of the sample of the Drugs.

Learned counsel for the petitioner further submits that against the mandate of the provisions contained in the Drugs Cosmetics Act, the learned Chief Judicial Magistrate refused the prayer by the impugned order dated 05.03.2021 passed in Miscellaneous Application No.739/2021, stating therein that one part of the sample was already provided to the District Drugs Warehouse Keeper, hence, there is substantial compliance of the law. The said order was challenged before the learned Sessions Judge in Criminal Misc. CIS No.138/2021 and the matter was heard by learned Additional Sessions Judge No.3 Kota, who declined to interfere with the order of the Chief Judicial Magistrate by his order dated 20.09.2021, relying on the same reason, which was recorded by the learned Chief Judicial Magistrate. Both the orders are under challenge in this petition as both the Courts below have failed to exercise jurisdiction according to law.

Learned counsel for the respondents contends that there is substantial compliance of law as the Drugs were seized from the Drugs Store, Community Health Centre, CHC, Vigyan Nagar, Kota and that authority disclosed under Section 18A that he had

obtained the drug from District Drugs Warehouse, Kota, to whom one of the sample was already supplied. The petitioner was nowhere having any right for a sample under the provisions of Section 23 of the Drugs and Cosmetics Act.

Relevant for our purpose, are the contents of Section 23, Sub-Section (1) to (4), which are reproduced below :-

> "(1) Where an Inspector takes any sample of a drug [1][or cosmetic] under this Chapter, he shall tender the fair price thereof and may require a written acknowledgement therefor.
>
> (2) Where the price tendered under sub-section (1) is refused or where the Inspector seizes the stock of any drug [1][or cosmetic] under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.
>
> (3) Where an Inspector takes a sample of a drug [1][or cosmetic] for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:
>
> Provided that where the sample is taken from premises whereon the drug [1][or cosmetic] is being manufactured, it shall be necessary to divide the sample into three portions only:
>
> Provided further that where the drug [1][or cosmetic] is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug [1][or cosmetic] be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.
>
> (4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—
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> (i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug [1][or cosmetic]; and

[2][(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A."

Section 18A of the Act reads as under:-

"**18A. Disclosure of the name of the manufacturer, etc.** —Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic."

A bare perusal of the provisions of Section 23(4)(iii) above, would make it clear that one part of the sample shall be sent to the person, whose name and address has been disclosed under Section 18A as manufacturer. Section 18A of the Act requires disclosure of the name of manufacturer and not only of the Stockists.

Notice to the petitioner reveals that name of the petitioner was disclosed as manufacturer under Section 18A. Therefore, the petitioner is entitled for one sample of the seized Drugs to protect/defend his right and interest in the pending proceedings.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **Laborate Pharmaceuticals India Limited and others vs. State of Tamil Nadu** reported in (2018) 15 SCC 93 for his submission that in the event of non-supply of a part of the sample to the petitioner-manufacturer, valuable rights of the petitioner would be affected, therefore, mandate of law cannot be ignored.

The provisions of law as referred above, as well as the material available on the record are clear and evident that under

Section 18A name of the manufacturer is also to be disclosed besides other disclosures of procurement of the Drugs in question and from the notice to the petitioner issued by the Drugs Inspector, it is clear that under Section 18A name of the petitioner was disclosed as manufacturer. Therefore, petitioner was entitled for a part of seized sample under Section 23(4)(iii) of the Act.

Accordingly, it is held that both the Courts below have failed to exercise jurisdiction vested leading to miscarriage of Justice, hence, the impugned orders are not sustainable. They are hereby quashed accordingly, and it is directed that the petitioner be supplied with a part of the sample seized under the Act.

The petition accordingly stands allowed.

Pending application, if any, stands disposed of.

(BIRENDRA KUMAR),J

Ashwani/-61