

Jammu & Kashmir High Court

M/S Amazon Drugs Pvt. Ltd vs State Of J&K And Others on 7 December, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

Reserved on : 29.11.20 22

Pronounced on : 07.12.2022

CRMC No. 124/2012

IA No.141/2012

M/s Amazon Drugs Pvt. Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Sachin Gupta, Advocate

Vs

State of J&K and others

.....Respondent(s)

Through: Mr. S. S. Nanda, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE  
JUDGEMENT

Heard learned counsel for the parties.

01. The petitioner is a drug manufacturing company by virtue of Licence no. KTK/25/318/93 on Form no. 25 and Licence no. KTK/28/251/93 on Form no. 28 for manufacturing sale and distribution of drugs.

02. The petitioner reckoned itself aggrieved of institution of a criminal complaint under section 18(a)(i) read with section 27 of the Drugs and Cosmetics Act, 1940 by the respondent no. 1-Drug Inspector, Udhampur against the petitioner, and also the proforma respondents 2 & 3 herein, instituted before and taken cognizance by the Court of Chief Judicial Magistrate, Udhampur.

03. Factual background in which the said complaint came to be instituted is that on 24.05.2007, the Drug Inspector of District Udhampur had come to lift samples of Tablets NOVA 650 from the premises of M/s Neeraj Medical Hall, Bus Stand, Chenani, District Udhampur. The batch number of the drugs so lifted was 14101, the date of manufacturing was August, 2006 and the expiry date was July, 2009. This sample of drug was sent to the Govt. Analyst for analysis vide Form no. 18 dated 25.05.2007 and in response thereto the Govt. Analyst vide its report dated 25.06.2007 came to declare the drug so examined as not of standard quality.

04. Upon this, the Drug Inspector Udhampur had called upon the concerned M/s Neeraj Medical Hall, Bus Stand, Chenani to disclose the source of purchase which was referred to the concern of M/s Jandial Pharmaceuticals, Mohalla Paharian, Jammu wherefrom the last reference was made to the petitioner herein, as being the manufacturer of the drug in reference.

05. The Drug Inspector, Udhampur, vide his letter dated 12.09.2007 addressed to the petitioner and sent on 14.09.2007, conveyed to the petitioner about the outcome of the Govt. Analyst CFDS Jammu's report with respect to the drug in reference. The said letter received by the petitioner on 18.09.2007 was accompanied with a copy of the Govt. Analyst's report.

06. The petitioner at its end vide its letter dated 27.09.2007, came forward with its statement of facts on the case situation and exercised the right of re-testing the drug in question from the Central Laboratory. This communication from the petitioner's end to the Drug Inspector Udhampur is dated 27.09.2007 and it is an undisputed and undeniable fact that the said communication dated 27.09.2007 was duly received by the Drug Inspector, Udhampur. After a prolonged lay off for almost one year, the Drug Inspector, Udhampur came forward with institution of the complaint on 22.09.2008 against the petitioner and the two retailers above named. It is this complaint which came to be taken cognizance by the Court of Chief Judicial Magistrate, Udhampur in terms of an order dated 22.11.2008.

07. The petitioner, feeling aggrieved of the cognizance of said complaint and issuance of the process against it, came to counter the very said complaint and the cognizance process thereof by filing of the present petition under section 561(A) of the Jammu & Kashmir Code of Criminal Procedure, Svt. 1989 on the plea that the same was an abuse of process of law and against the procedure prescribed under the Drugs & Cosmetics Act, 1940. This Court in terms of an order dated 20.04.2012 had sent for the records of the complaint from the court below which resulted in no proceedings in the matter pending adjudication of the present petition. It is now almost more than ten years of pendency that the present petition is coming up for its adjudication.

08. The long pendency of the case itself before this Court has become a primary contributory factor in allowing the present petition given the fact that the petitioner's grievance was concerning the loss of option of re-testing of the sample in question. Had this Court, at an appropriate point of time when this petition had come to be filed, taken a call, with a simple direction to the Chief Judicial Magistrate, Udhampur, who had taken the cognizance of the complaint, to resort to the procedure as envisaged under section 25(4) of the Drugs and Cosmetics Act, 1940 for directing re-testing of the samples in reference on the basis of the option exercised and registered by the petitioner by virtue of its communication dated 27.09.2008, then the complaint would have resulted in the compliance of the procedure as envisaged under the Drugs and Cosmetics Act, 1940 and consequently ensuring the trial of the complaint in the light of the re-testing report, as asked for by the petitioner. After ten years of pendency, even if this Court was now to ponder rejecting the present petition of the petitioner against the complaint, even then the statutory right of the petitioner for exercise of which the petitioner had carried out the part of responsibility envisaged under the Drugs and Cosmetics Act, 1940, the very sample which was to be sent for re-testing must have lost its all chemical composition, nature and efficacy and, therefore, it would be nothing but failure of justice in the

matter in allowing stale prosecution to take effect against the petitioner.

09. In view of the aforesaid, the present petition is deserving to be allowed and, as such, criminal complaint on File no. 50A/Comp of 2008 titled "State through Drug Inspector District Udhampur Vs Neeraj Gupta and others" pending before the Chief Judicial Magistrate, Udhampur is hereby quashed.

(Rahul Bharti) Judge Jammu 07.12.2022 Muneesh Whether the order is speaking : Yes Whether the order is reportable : Yes/No