

**IN THE COURT OF XV METROPOLITAN MAGISTRATE, GEORGETOWN,
CHENNAI**

PRESENT: Thiru. A.Muralikrishna Anandan, B.A., B.L.,
XV Metropolitan Magistrate

On Saturday, this the 17th day of April 2021

Calendar Case No. 435 of 2021

This case having coming up today final hearing before me in the presence of Assistant Public Prosecutor Gr-II for the complainant and M/s.T.Bose and S.Gurumoorthy, advocates for the accused; and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

JUDGMENT

Serial number of the case	CC.No. 1348 of 2020
The date of the commission of the offence	From 04.11.2019
The name of the complainant	The State – represented by: The Drug Inspector, Park Town Range, O/o., The Asst. Director of Drugs Control, Zone – I, D.M.S. Campus, 259-261, Annasalai, Teynampet, Chennai – 600 006
The name of the accused persons	1. M/s.Tamman Titoe Pharma Pvt. Ltd., 56-57, Sidco Pharmaceutical Complex, Alathur – 603110. Rep by its director P.S.Anantharaman 2. Thiru P.S.Anantharaman, Director M/s.Tamman Titoe Pharma Pvt. Ltd., 56-57, Sidco Pharmaceutical Complex, Alathur – 603110.
The offence complained of or proved	The accused contravened Section 18(a)(i) of D&C Act for having manufactured and sold, distributed the drug Tamsone 30 ml vial , which does not conform to the requirements of BET. The said contravention is punishable under Section 27(d) of Drugs and Cosmetics Act 1940

The plea of the accused and his examination:	Accused pleaded not guilty and claimed for trial.
The Final Order	<p>The accused are found guilty of offence u/s.18(a)(i) R/w Sec.27(d) of Drugs and Cosmetics Act 1940 and they are convicted and 2nd accused sentenced to undergo Simple Imprisonment for one day till raising of the court and both the accused shall pay a fine of Rs.25,000/- each. IDSI one month.</p> <p>Apart from the fine amount, the accused shall pay a sum of Rs.1,500/- towards paper publication u/s.35 of the Act. The complainant shall receive the same and effect paper publication in any one of the Tamil New Paper having wide circulation. Total Fine – Rs.50,000/-</p>

Reasons for verdict:

1. This case is filed as a private complaint under Section 200 of Cr.P.C. against the accused for the alleged violations of Section 18(a)(i) R/w. Section 27(d) of Drugs and Cosmetics Act 1940.
2. Since, the Drugs Inspector is a public servant, recording of her sworn statement is dispensed with and this court directly took cognizance of the offence and issued summons to the accused. The accused entered appearance on 04.02.2021 and received the copies.
3. The offence under Section 27(d) of Drugs and Cosmetics Act is punishable with imprisonment up to two years. Therefore, summons procedure is followed. After giving sufficient time, when the substance of charge was put to the accused, the accused pleaded not guilty and claimed for trial.
4. To prove their case, the present Drug Inspector Tmt.Chithra is examined as PW1 and marked Ex.P1 to P15. When the accused are questioned about the

incriminatory portions of evidence of PW1, under Section 313(1)(b) of Cr.P.C, they pleaded not guilty. No defence evidence is adduced.

5. The point for consideration in this case is whether the complainant has proved the alleged charges against the accused.

The Point:

6. The 1st accused is a drug manufacturing company having drug licence valid upto 24.02.2020. The 2nd accused is the director of the said company. On 04.11.2019, the then Drug Inspector Tmt.R.Kalaiselvi inspected the premises of wholesale drug seller M/s.Hema Medical and Surgicals, she drew samples of Tamsone 30 ml vial, which was manufactured by the 1st accused company. Ex.P2 is the Form-17 for drawal of samples. One of the samples was sent for chemical analysis under ExP3 Form-18. The Government Analyst analysed the sample and gave Ex.P4 report dated 03.0102020. In that report, the following findings are given.

Analysis done	Result of Analysis
Extractable volume	: Nominal
Particulate Matter	: Passes test
pH	: (8.0) Passes test (Range: 7.0 – 8.5)
Sterility	: Passes Test
BET	: Does not pass test
Assay	: (86.9%) (Range 95 – 105%)
	: Does not pass test
In the opinion of the undersigned, the sample referred to above is NOT OF STANDARD QUALITY as defined in the Drugs and Cosmetice Act, 1940 and rules thereunder	

The said sample found to be not of standard quality. Consequently, the drug inspector issued Ex.P5 show cause memo dated 13.01.2020 to the said Hema Medicals. On the same day, the said Hema Medicals and Surgicals issued Ex.P6 reply, informing that they were storing the drugs in proper cool temperature and enclosed their stock statement. After sending notices to Utham Pharma under

Ex.P7 and Sowkiyam Pharma Distributors under Ex.P8, the complainant zeroed on the manufactures of the drug, namely the 1st accused herein.

7. On 13.02.2020, the complainant issued Ex.P11 show cause notice to the 1st accused with copy of the Analysis Report and one of the samples. For which, the 1st accused sent their Ex.P12 reply dated 17.02.2020 enclosing documents pertaining to manufacturing of said drugs. They have not sought for further analysis of the sample. Having found that no proper explanation for the notice, the complainant decided to take action. After taking over the charge from her predecessor, the present drug inspector submitted proposal for prosecution under Ex.P14. On 22.07.2020, the Director of Drugs Control granted sanction for prosecution, which is marked as Ex.P15. Thereafter, the complainant has filed this private complaint.
8. Section 18(a)(i) of the D&C prohibits manufacturing or sale or distribution of any drug which is not of a standard quality. Under Ex.P4 Analysis Report, it is found that the key ingredient in the drug 'Tamsone' was very less than one mentioned in the specification. Further, the drug failed to pass BET test. In Ex.P12 reply, the accused have not given any explanation to the non standard quality of the drugs. Further, they have not asked for further analysis of the sample by Central Lab. The fact that the drug manufactured by the 1st accused is proved to be not of standard quality. Further, the complainant examined herself as PW1 and adduced oral and documentary evidences. The act of the 1st accused is in clear violation of Section 18(a)(i) of D&C Act. This violation is punishable 27(d) of Drugs and Cosmetics Act 1940. Now, the punishments that have to be awarded to the accused has to be decided.

9. Section 27(d) prescribes minimum punishment of one year imprisonment with a maximum punishment of two years. Apart from the same, a fine not less than Rs.20,000/- has to be imposed. At the same time, the court, by assigning adequate and special reasons, can impose lesser sentence of imprisonment. The learned counsel for accused submitted that the alleged violations are not serious and no injury or harm has been caused to any public. Hence, he sought for leniency and lesser punishment.
10. On reading, the penal provisions of Section 27 of D&C Act, various punishment for various kinds of offences have been provided. Section 27(d) is a residuary provision for imposing punishment for the offences that do not come under section 27(a) to 27(c) of the Act. Section 27(d) includes punishment for various serious offences such as selling expired drugs or selling the drug without any licence, etc. and also for lesser offences such as minor violation of conditions of licence. It is not the case of the prosecution that there is any injury or harm caused to any public or the accused caused loss to the Government. However, being a responsible manufacturer of the drugs, the accused should have maintained strict standard and quality of the drug. Considering these circumstances, it is appropriate to impose a fine of Rs.25,000/- with imprisonment till raising of this court.
11. In result, The 1st and 2nd accused are found guilty of offence under Section 18(a)(i) r/w.27(d) of Drugs of cosmetics Act 1940 and they are convicted and the 2nd accused is sentenced to undergo Simple Imprisonment of one day till rising of the court. Further, the 1st and 2nd accused shall pay a fine of Rs.25,000/- each. In

default the 2nd accused shall undergo further period of Simple Imprisonment for one month.

12. Apart from the same, the accused shall pay Rs.1,500/- towards expenses for effecting paper publication under Section 35 of the Act. The complainant shall withdraw the same and effect paper publication in any one of the Tamil daily having wide circulation. Total Fine 50,000/-.

Property Order:

13. No Property is produced.

Dictated directly to the typist, typed by her, corrected and pronounced by me in open court on this the 17th day of April 2021.

Sd/- A.Muralikrishna Anandan
XV Metropolitan Magistrate
George Town, Chennai

Annexure:

Complainant side witnesses:

PW1 - Tmt.Chitra (the present Drug Inspector)

Complainant side Exhibits:

Ex.No.	Description of Documents
Ex.P1	G.O.Ms.No.93 dated 30.03.2010
Ex.P2	Form – 17
Ex.P3	Form – 18
Ex.P4	Report of Government Analyst
Ex.P5	Show cause notice issued to Hema Medicals and Surgicals
Ex.P6	Reply given by Hema Medicals and Surgicals
Ex.P7	Show cause notice issued to Uttham Pharma
Ex.P8	Reply given by Uttham Pharma
Ex.P9	Show cause notice issued to Sowkkiyam Pharam Distributors

Ex.P10	Reply given by to Sowkkiyam Pharam Distributors
Ex.P11	Show cause notice dated 13.02.2020 issued to the 1 st accused
Ex.P12	Reply Letter dated 17.02.2020 given by the 1 st accused
Ex.P13	Order dated 09.03.2020 regarding charge assumed by the drug inspector
Ex.P14	Proposal for prosecution dated 03.07.2020
Ex.P15	Sanction order dated 22.07.2020

Defence witnesses:

Nil

Defence Exhibits:

Nil

Note :

1. Fine imposed and collected.
2. The result of the case is intimated to complainant

Sd/- A.Muralikrishna Anandan
XV Metropolitan Magistrate
George Town, Chennai