

Presented on : 19/08/2009.
Registered on : 19/08/2009.
Decided on : 28/09/2016.
Duration. :-07Y. -01M.-09D.

Exh.No.

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, PUNE
(Presided over by H.M. Bhosale)

REG. CRIMINAL CASE NO. 3771/2009.

The State of Maharashtra through
Shri.S.B.Patil, Drug Inspector,
Food & Drug Administration,
791/93, Lucky Building,
New Guruwar Peth, Pune.

... **Complainant**

- Versus -

1. Mr. Jayesh Chandulal Mehta,
Proprietor of M/s Olcare Laboratories,
Situated at 505/A, GIDC Estate,
Wadhwan City-363035,
Dist.Surendranagar (Gujarat)
Residence at 15, Jaihind Society,
Surendernagar 363002.
2. Mr. Atul Kanakrai Mehta,
Manufacturing Chemist of
M/s Olcare Laboratories,
Situated at 505/A, GIDC Estate,
Wadhwan City-363035,
Dist.Surendranagar (Gujarat)
Residence at 208, Taramani Complex,
Joravarnagar, Surendernagar 363020.
3. Mr. Nazir Akabarbai Mirza,
Analytical Chemist of
M/s Olcare Laboratories,
Situated at 505/A, GIDC Estate,
Wadhwan City-363035,

Dist.Surendranagar (Gujarat)
Residence at Kasba Seri, Dholi Pole,
Surendernagar 363030.

.. Accused

Offence under section 18(a)(i) read with section 16 punishable under section 27(d) of the Drugs and Cosmetics Act, 1940.

Mrs. Lingayat, the learned APP for the State.
Mr.S.T.Agarwal, the learned advocate for accused.

JUDGMENT

(Delivered on 28th day of September, 2016)

01. This is the complaint filed by Mr.S.B.Patil, Drug Inspector, Pune alleging that accused have committed the offence under section 18(a)(i) read with section 16 punishable under section 27(d) of the Drugs and Cosmetics Act, 1940.

BRIEF FACTS -

02. It is contended that the complainant is appointed as a Drug Inspector. Accused no.1 is proprietor of firm M/s Olcare Laboratories, situate at 505/A, GIDC Estate,Wadhwan City-363035, Dist. Surendranagar (Gujarat). Accused no. 2 is manufacturing chemist and accused no.3 is analytical chemist working in M/snOlcare Laboratories.

03. It is contended that on on 29/03/2008 Mr.S.B.Patil, the Drug Inspector visited the premises of M/s Olcare Laboratories, situate at GIDC Estate, Wadhwan City, Dist.Surendranagar (Gujarat) and drawn sample of Azicare 200 Suspension B.No.7870 manufactured by M/s Olcare Laboratories. It was sent for analysis to Drug Control Laboratory. It revealed in the analysis of the said

sample by the Government Analyst that said is not of the standard quality as content of Azithromycin in the sample was less than 12.85% of the labelled amount.

04. On the basis of this Public Analyst's report the Drug Inspector formed the opinion that the accused have committed the offence under section 18(a)(i) by manufacturing drug of sub standard quality. In the result, the present complaint came to be filed alleging that accused have committed the offence under section 18(a)(i) read with section 16 punishable under section 27(d) of the Drugs and Cosmetics Act, 1940.

05. Mr.Patil, Assistant Commissioner has examined himself (Exh.39) before charge. Thereafter, the case was fixed for argument on the point of framing of the charge.

06. Today, I have framed the charge (Exh.68) against all accused and read over to them. They admitted charge and expressed desire through their advocate to plead guilty instead of facing the trial. They have voluntarily made statement that they want to plead guilty. Their advocate reiterated their stand. I am satisfied that accused wish to plead guilty voluntarily.

07. Mr.Patil, Assistant Commissioner is present. He submitted that accused have manufactured the sample drug. As per label declaration the percentage of Azithromycin in sample drug is 200 MG, however, in actual analysis it found only 25.69 MG/5 ML. He further submitted that this drug normally in use as antibiotic. Due to less percentage than label declaration, patient will not get relief effectively. Therefore, he submitted that as drug is not injurious to health, maximum fine may be imposed.

08. Per contra, the learned advocate for accused submitted that accused are

ready to take care in future. This might have been resulted due to want of proper formation or subsequently degradation of the said content. Accused are facing trial from last 8 years. Therefore, considering the contravention, minimum sentence and fine may be imposed.

09. Having considered nature of the offence, to my mind, the percentage of Azithromycin found less than label declaration. The only result of this contravention as per the complainant is that the patient will not get relief immediately and he will require to take more medicine. Mr.Patil submitted that due to passage of time there is possibility of degradation of this content. The degradation is possible if its formation is not proper and want of stability test. This very situation indicates that even due to degradation for want of proper formation the percentage might have been found less.

10. Thus, considering all these aspects coupled with fact that drug is neither spurious or injurious and accused are facing trial from last 8 years, it would not be proper to keep accused behind bar. They have undertaken that they will take proper care in future. Therefore, it would be proper to direct Drug Inspector to take note of their undertaking and intimate in office accordingly, so, this fact will be part of record. As far as sentence, accused no.1 is a proprietor and accused no.2 and 3 are only chemists. Therefore, it would be proper to impose heavy fine upon proprietor.

11. Thus, considering aforesaid reasons coupled with this fact, the following sentence will meet the ends of justice. In the result, I pass the following order.

ORDER

1] Accused no.1 to 3 are convicted for the offence under section 18(a)(i) read with section 16 punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 vide section 241 of the Code of Criminal Procedure.

- 2] Accused no.1 to 3 shall suffer simple imprisonment till rising of the Court. Accused no.1 shall pay fine of Rs.40,000/- and accused no.2 and 3 shall pay fine of Rs.30,000/- each, in default, to suffer simple imprisonment for one month.
- 3] The bail bonds furnished by accused stands cancelled.
- 4] The Drug Inspector is permitted to destroy the seized stock as it is not fit for use as a drug.

Date : 28/09/2016.

(H. M. Bhosale)
Chief Judicial Magistrate, Pune.

I affirm that the contents of this P.D.F file judgment are same word for word as per original Judgment.

Name of Steno : Shri. V.P.Kadam

Court Name : Chief Judicial Magistrate, Pune.

Date of judgment : 28/09/2016.

Judgment Signed by P. O. on : 28/09/2016.

Judgment uploaded on : 28/09/2016.