

Presented on : 23/01/2003.
Registered on : 23/01/2003.
Decided on : 16/08/2018.
Duration : Y. M. D.
15 06 23

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, PUNE

(Presided over by Satyasheela T. Katare)

REG. CRIMINAL CASE NO.7/2003

Exh. No.

The State of Maharashtra through
Mr. Gaurishankar Baburao Byale
Drug Inspector,
Food and Drug Administration (M.S.),
791/93, New Guruwar Peth,
Pune-42.

... **Complainant**

- Versus -

1. Mr. Mahendra Champalal Jain
R/o. : 584/5, B Champasagar,
Amar Heights, Gultekdi, Pune

Proprietor of M/s. K. M. Medical Stores
317, Umbrella No.1, KEM Hospital Campus,
Somwar Peth, Pune.

... **Accused**

Charges : Contravention of section 18 (a) (vi), section 18-B read with Rule 64(1), 65(3), 65(4), 65 (6) , 65(7) punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 and Rules.

Mr. Mendki, the learned APP for the State.
Mr. S. K. Jain the learned advocate for accused

JUDGMENT

(Delivered on 16th day of August, 2018)

1) This is the complaint filed by Mr. Gaurishankar Baburao Byale, Drugs Inspector, Pune alleging that accused has contravened section 18 (a) (vi), section 18-B read with Rule 64(1), 65(3), 65(4), 65 (7) punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 and Rules.

Following are the facts in brief:-

2) It is contended that the complainant is appointed as a Drug Inspector under section 21 of the Drugs and Cosmetics Act, 1940 [For short "the Drugs Act"].

3) It is contended that on 12/08/2002 Mr. Lakhpatraj S. Mehta made an oral complaint that accused had sold the drug injection Imepenium, Tienam and Primexin at higher price and without mentioning Batch Number , expiry date and manufacturers name.

It is further contended that on 14/08/2002 complainant along with Mr. A.S. Dube, Asst. Commissioner, Mr. N.P. Bhandarkar and Mr. K.B. Patwardhan, Drug Inspector, Pune visited accused premises i.e. M/s. K. M. Medical Stores, Somwar Peth, Pune . Accused was present at the time of inspection. Accused was asked to produce the carbon copy of bills

mentioned in Para No.2 of complaint. Carbon copy of said bills were not available with accused. As computer was used for preparing sale bills it was possible to get duplicate copy of said bills, so accused was asked to produce the duplicate copy of said bills. Accordingly, accused submitted duplicate copy of bills mentioned in Para No. 3. Original copy of the bills were submitted to Samarth Police Station , Pune vide letter No. 01/3 dt. 12.11.2002 for further investigation as per their instruction.

4) As per Point No. 4 of inspection report carried on dated 14/8/2002 , it was observed that accused was stored drugs at room temperature which were required to store in refrigerator. During investigation complainant made required compliance .

Office of the complainant had sent a letter No. 2786-02/03 dated 08.10.2002 regarding to acknowledgment of the complaint to Mr. L.S. Mehta. On 16/10/2002 Mr. L.S. Mehta submitted the letter to the office in which he stated that during the treatment of his son Mr. Alpesh Mehta, in KEM Hospital, all prescribed medicine were brought from M/s. K.M. Medical Stores only. He also stated that total 59 injections of Tienam 500 mg. And Primexin 500 mg. Were administered from 14/04/2002 to 23/04/2002 to his son Alpesh. Mr. Mehta also mentioned that the said injections (Imepinium, Tienam and Primexin) were purchased at the rate of Rs. 1850/- per vial and sale bill issued against the said purchase did not bear manufacturing date, expiry date, Batch No. and manufacturerer's name of said drug.

5) It is further contended that complainant sent a letter No. Drug/s/2979-02/3 dated 02/11/2002 to Deputy Drug controller CDSCO, Mumbai for giving the information regarding to import of injections

Impenium, Tienam and Primexin. Deputy Drug Controller, CDSCO, (West Zone) Mumbai vide his letter No.7-5/WZ 2002/3929 dated 26/11/2002 informed that there were no imports of Injections Impenium , Tienam and Primexin for stock and sale from Mumbai, Delhi, Ahmedabas, Nhavasheva. There were import by some of the individual for personal use. From the said record it was observed that subject drugs were purchased by individual between the range of Rs. 16 to Rs. 49/- per vial.

6) During the investigation following facts were observed :-

i) Mr. Lakhpatraj S. Mehta made an oral complaint on 12/08/2002 and in writing on 24.09.2002 and 16.10.2002 and he mentioned that subject drugs were purchased from accused (M/s. K.M. Medical Stores, KEM Hospital campus, Pune) only. He had submitted the photo copy of said bills, in that support accused used computer for issuing the sale bill of drugs. It was very easy and possible to change the record which was stored in computer. Which gave sufficient time to accused to change, delete and manipulate the records of subject drugs. Accused had not produced carbon copy of subject bills initially on first inspection dated 14.08.2002 and subsequent on 01.10.2002. Accused had change a manipulate the records of sale bills which were issued to Mr. Mehta and submitted fabricated and forged bill on 5.10.2002 and stated that those bills are genuine.

ii) M/s. K.E.M. Hospital had confirmed that Mr. Alpesh Mehta was admitted in th hospital and he was given injectinos Imepenium (Tienam and Primexin) 1 gm 8 hourly per day for 10 days (14.042002 to 23.04.2002). Bill issued by accused to Mr. Mehta from 14.04.2002 to 23.04.2002 contains total 59 vials of subject drugs.

iii) Accsued had illelgally procured the drug Injections Impenium,

Tienam and Primexin and sold without mentioning Batch No. Expiry date and manufacturer's name on sale bill to Mr. Mehta. Accused had denied the same only to escape from law and to avoid further consequences.

iv) Accused had stored the drugs viz. Injections Pitocin, Injection Clexone at normal room temp. actually which were required to store in a refrigerator. Due to improper storage of drugs efficacy of the drugs may be reduced and drug may fail to give desired effect.

7) It is contended that as accused was having dispute with Mr. Mehta much earlier than 14.08.2002.

Further contention is that, complainant had lodged first information report at Samarth Pl. Station bearing FIR No. 154/2002 dt. 24/10/2002 on that basis police filed the charge sheet in the JMFC Court, Pune Vide No. R. 133/02. Accordingly, complainant charges the accused as under ;

- a) Accused had not stored the drug in refrigerator which were required to be stored at controlled temperature.
- b) Accused had illegally procured the drug Injections Impenium, Tienam and Primexin and not maintained the purchase details of the same
- c) Accused sold the drugs Injection Impenium, Tienama and Primexin to Mr. Mehta without mentioning Batch No. , Expiry date and manufacturer's name and denied the same later on.
- d) Accused not produced/maintained genuine records of injections Impenium, Tienama and Primexin .
- e) Accused not preserved the records for a period of not less than 2 years from the date of last entry therein.

f) Accused changed, deleted and manipulated the sales record of injections Impenium, Tienama and Primexin and submitted the forged bills to the office and stated that those were genuine one. In this way accused tried to mislead and misguide to the office.

It is contended by the complainant that accused contravened section 18 (a) (vi) and section 18-B read with Rule 64 (1) , 65 (3) (1), 65(4) (4) (i), 65 (6) 65 (7) and 65 (17) of the said Act punishable under section 27 (d) of the said Act. So lastly prayed that accused be dealt with as per the law.

8) My learned predecessor took cognizance and issued process against accused. In response to summons, accused appeared before the Court in the instant complaint.

9) The complainant examined himself before framing of the charge against accused. My Ld. Predecessor framed charge against accused vide Exh. 148. In view of submission of Ld. Counsel of the accused and A.P.P. charge has been altered against accused on 2/12/2017. He pleaded not guilty and claimed to be tried.

10) The statements of accused under section 313 of the Code of Criminal Procedure recorded at Exh.196. His defence is of total denial. He has submitted that complainant falsely implicated to him in the present complaint.

11) Heard the complainant and defence Counsel Adv. S. K. Jain at length. Perused written argument vide Exh. 220 filed by complainant.

12) Having regard to the argument advanced by the complainant and defence counsel as well as documentary evidence following points do arise for my determination. I have given my findings thereon for the reasons stated below.

Sr. No.	Points	Findings
1	Whether the complainant, Mr.Gaurishankar Baburao Byale, Drugs Inspector proved that on 14/08/2002 at M/s. K.M. Medical Stores, KEM Hospital Campus, Somwar Peth, Pune accused Mr. Mahendra Champalal Jain failed to store the drugs in question in refrigerator which were required to be stored at controlled temperature and thereby committed an offence under section 18(a)(v) read with Rule 64 (1), 65 (7) punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 ? In the negative
2	Whether the complainant, Drug Inspector on the aforesaid day, date, time and place proved that accused illegally procured the drug injections Imprenium, Tienam and Primexin and not maintained the purchase details of the same and thereby committed an offence under section 18(a)(vi) read with Rule 64 (4) (i) punishable under section 27(d) of the Drugs and Cosmetics Act, 1940 ? In the negative
3	Whether the complainant, Drug Inspector on the aforesaid day, date, time and place proved that accused had sold the drugs injections Imprenium, Tienam and Primexin to Mr. Mehta without mentioning Batch number, expiry date and manufacture's name and denied the same later on and thereby committed an offence under section 18(a)(vi)	

	read with Rule 65 (3) (1) (f) , punishbale under section 27(d) of the Drugs and Cosmetics Act, 1940 ? In the negative
4	Whether the complainant, Drug Inspector on the afroresaid day, date, time and place proved that accused had not produced maintained genuine records of injections Imprenium, Tienam and Primexin and thereby committed an offence under section 18(a)(vi) read with Rule (6) , section 18-B punishbale under section 27(d) and 28-A of the Drugs and Cosmetics Act, 1940 ? In the negative
5	Whether the complainant, Drug Inspector on the afroresaid day, date, time and place proved that accused had not preserved the records for a period of not less than 2 years from the date of last entry and thereby committed an offence under section 18(a)(vi) read with Rule 65 (7), section 18-B punishbale under section 27(d) and 28-A of the Drugs and Cosmetics Act, 1940 ? In the negative
6	Whether the complainant, Drug Inspector on the afroresaid day, date, time and place proved that accused had changed, deleted and manipulated the sales record of injections Imprenium, Tienam and Primexin and submitted the forged bills to the office and stated that those were genuine one and thereby committed an offence under section 18(a) (vi) read with Rule 65 (6), 65 (7) section 18-B, punishbale under section 27(d) and 28-A of the Drugs and Cosmetics Act, 1940 ? In the negative
7	What Order?	... Accused is acquitted

REASONS

13) In order to fasten guilt of the accused, the prosecution has examined the Drugs Inspector, Mr. Gaurishankar Baburao Byale (PW1) at Exh.29, Dr. Devidas Nanasaheb Bhalerao (PW2) at Exh. 210 and Dr. Sudha Keshav Choudhari (PW3) at Exh. 216. As well as so many documents are proved by the witnesses in their evidence.

14) The Drugs Inspector advanced multifold submissions in order to substantiate guilt of accused. He submitted that alleged contraventions are quite serious. It is highly objectionable and against provisions of the Drugs Act to disburse drugs not of standard quality. Therefore, he urged that maximum punishment may be imposed to accused.

As to Point Nos. 1 to 6

15) It is contended and testified by the complainant, Mr.Gaurishankar Baburao Byale, Drugs Inspector (PW1) that on 14/08/2002 it was observed to him that accused was stored drugs at room temperature which were required to store in refrigerator. On the contrary, in his cross examination he has admitted that there was cold storage in the shop premises of the accused . It is also admitted by him that as per reply vide Exh. 130 of accused regarding his showcause notice dt. 17/10/2002 wherein it was disclosed by the accused that at the time of visit the medicines including injections taken out from cold storage from handing over to them to customers were lying at the sale counter and they were meant to be kept back after giving appropriate delivery to the buyers. I have also perused reply of accused vide Exh. 130 and I have also observed that the said fact is mentioned in the reply of accused. In view of such

types of admissions given by the complainant i.e. P.W.1 Drug Inspector in his cross examination one cannot say that accused had not stored the drugs in refrigerator.

16) It is contended and testified by the complainant, Mr.Gaurishankar Baburao Byale, Drugs Inspector (PW1) that accused illegally procured the drug injections Imprenium, Tienam and Primexin and not maintained the purchase details of the same. But on the contrary, said witness has admitted in his cross-examination that no bill was found with accused during inspection for dealing in Imprenium, Tienam and Primexin injections nor, any stock of such injections was found at the premises of the accused. After perusal of cross-examination of P.W.1 it also appears that he did not make any inquiry about the account books with the accused so as to find out material in support of his complaint. He also admitted that the bills shown by the accused at the time of first inspection visit were genuine. As well as he did not check bills regarding sale of injections Pitocin and Plesane on the date of his first visit. P.W.1 also admitted that in the bills taken from the accused at the time of first visit only required details as to manufacture's name batch number and expiry date were found in the bills.

17) It is contended and testified by the complainant, Mr.Gaurishankar Baburao Byale, Drugs Inspector (PW1) that accused had issued the bill to Lakpatraj for the sale of injection, medicines without mentioning batch No. expiry date and name of manufacturer and not kept the purchase bill of the said drugs. After that accused refused the bill given to Lakpatraj and stated that bills are bogus which were actually issued by him. On the other hand, P.W. 1 has admitted in his cross examination that

no outer packing of injections displaying name of manufacture, manufacturing date, date of expiry etc. were taken by him from Lakpatraj Mehta.

18) It is contended and testified by the complainant, Drugs Inspector (PW1) in his cross examination that on his first visit bills of sale of injections as above named were not shown but whatever bills were shown they did not include these for sale of the above mentioned injection by the accused. There are other two pharmacist at the shop premises of the accused but he did not make any enquiry with them as regards sale and purchase of alleged injections. In my opinion witness would have inquired with the said Pharmacist regarding the sale and purchase of alleged injections.

19) It is admitted by P.W.1 that at the relevant time the alleged injections were not being manufacture in India. He had gathered information regarding importers of said injections in India. Accused was not importer of the alleged drugs and he was also not purchaser from any impoter. In view of such type of admission no one can say that complainant has proved the allegations of preserving the record for a period of not less than 2 years from the date of last entry.

20) It is testified by the complainant that accused had changed, deleted and manipulated the sales record of injections Imprenium, Tienam and Primexin and submitted the forged bills to the office and stated that those were genuine one. This fact is also not proved by the complainant beyond reasonable doubts. Mere such type of testimony is not sufficient to prove the guilt of the accused regarding submissions of forged bills by the

accused to the office of complainant by saying that those bills are genuine one.

21) Dr. Devidas Nanasaheb Bhalerao (PW2) at Exh. 210 has testified that patient Alpesh Mehta was indoor patient of K.E.M. Hospital, Pune since 14/4/2002 to 23/4/2002. But in his cross examination he has admitted that he neither medically treated the patient nor he advised any medicine and K.E.M. Hospital or doctor of that hospital have no any concern from where the relatives of the patient bring the medicine, injections to be administered to the patient. Last witness examined by the prosecution is Dr. Sudha Keshav Choudhari (PW3) at Exh. 216. She has testified that prescription was advised by her as per Exh. 215 during the period 14/4/2002 to 23/4/2002 to patient Mr. Alepsh Mehta who has supported to the testimony of P.W.2 .

22) After perusing the above examination chief of the witnesses I found that these witness are not helpful to the prosecution regarding alleged drugs brought by the Mr. Lakhpatraj Mehta from the accused . As well as said Mr. Lakhpatraj Mehta is not examined by the complainant who had made oral complaint to his office. Actually he is star witness of the prosecution. Therefore, though patient namely Alpesh Mehta was admitted in the K.E.M. hospital in the above mentioned period but it does not mean that the father of Alpesh Mehta namely Mr. Lakhpatraj had brought the medicine from medical of accused.

23) In view of discussion of testimonies of the witnesses it is found that these witnesses are not corroborating to each others to prove the guilt of the accused beound reasonable doubt. Because it appears that P.W.1 who

is complainant is not firm on his testimony afforded by him in his examination in chief as he has given so many admissions in favour of the defence .

24) In view of submissions of Ld. A.P.P. and Ld. Defence counsel and testimony of P.W.1 to 3 as well as documentary evidence placed on record as well as contradictions and omissions brought by the Ld. Defence Counsel in the testimony of complainant, there is no hesitation to firm the opinion that complainant failed to prove the guilt against accused beyond reasonable doubt. Hence, I answer point Nos. 1 to 6 in the negative.

As to Issue No. 7

25) As per section 437-A of the Code of Criminal Procedure it is necessary to direct the accused to execute his personal bond and surety bond with condition that he will attend the Hon'ble Appellate Court, if complainant prefers an appeal against this judgment. Hence, in answer to point No.7, I proceed to pass following order :-

ORDER

- i) Accused is acquitted of the offence under section section 18 (a) (vi) and section 18-B read with Rule 64 (1) , 65 (3) (1) (f) , 65(4), (4) (i), 65 (6) 65 (7) and 65 (7) of the said Act punishable under section 27 (d) and 28-A of the said Act.
- ii) His bail bonds stand canceled. He is set at liberty.

- iii) Accused should execute Personal Bond to appear before the higher Court as and when such Court issued notice in respect of any appeal or petition filed against this judgment. Bail bonds shall be in force for six months.

(Dictated and pronounced in open Court)

sd/-

Date : 16/08/2018

**(Satyasheela T. Katare)
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 : Smt. S.R. Shaikh

Court Name : Chief Judicial Magistrate, Pune.

Date of judgment : 16/08/2018

Judgment Signed by P.O. on : 03/11/2018

Judgment uploaded on : 03/11/2018

