

DATED THIS THE 17th DAY OF JUNE, 2026

SESSIONS CASE No.42/2024

ACCUSED:

1. M/s Lenit Pharmaceuticals,
Plot No.02, Industrial Area,
Raja Ka Bagh, VPO Giora-176201,
Tehsil, Nurpur,
District Kangra (H.P).

Represented by:

2. Sri.Dinesh Gupta,
Proprietor Cum Manufacturing Chemist
of M/s Lenit Pharmaceuticals,
Plot No.02, Industrial Area,
Raja Ka Bagh, VPO Giora-176201,
Tehsil, Nurpur,
District Kangra (H.P).

(By Sri.A.D.Hosamani, Advocate)

Vs.

COMPLAINANT:

State of Karnataka
By Assistant Drugs Controller,
Haveri Circle, Haveri.

By Learned Public Prosecutor

ORDER ON APPLICATION U/Sec.227 OF Cr.P.C.

At the stage of evidence before charge, the accused of this case (complaint in FR No.1287/2021 and C.C.No.1287/2021 on the file of learned Prl. Civil Judge & JMFC., Haveri,) for the offences punishable U/s 27(c) and 27(d) of the Drugs and Cosmetics Act, 1940 [Sec.27(c) r/w Sec.17B(a) and 27(d) r/w Sec.18(a)(i)] has filed this petition U/s 227 of Cr.P.C to discharge him of the alleged offences.

Violation of Sec.17B(a) should be there to attract Sec.27(c) and Sec.27(c) does not attract for violation of 17B(d).

2. Assistant Drugs Controller, Haveri Circle, Haveri filed a complaint against the accused No.1 the manufacturing company represented by accused No.2 the proprietor. Learned magistrate has taken cognizance, issued

notice to the accused, secured his presence and committed the matter for trial.

3. After receipt of committal order and record, this case was registered and summons was issued to the accused. Accused appeared, got released on bail and filed this petition for the discharge on the following grounds;

No panchanama was drawn at the time of sample purchase. Bagalkot Agency distributed the medicine before supply by the accused. Stock of the medicine with the Bagalkot agency was not tallying with the record. A story is created that, medicine supplied to Bagalkot agency was damaged partially. No damage claim was there. Such claim is created after one month. Complainant has not mentioned the licence number of the manufacturer at the time of form No.17 but mentioned at the time of form No.13 and 18. Even the said licence number is not tallying with the actual licence number. Mode of submission of sample to the Government lab Hubballi is not explained and said sample reached after 21 days of dispatch. Accused wanted to send the sample to central lab, Kolkata. He

was asked to appear before learned JMFC. Accordingly, he filed CrI.Misc.155/2016 on 08.07.2016 under intimation to complainant to send the sample to central lab, Kolkata but complainant filed CrI.Misc.No.698/2016 for the same purpose. In the said case, sample was sent to central lab, Kolkata hurriedly. No opportunity was given to the accused to identify the sample but it was identified by Bagalkot agency who is not the accused.

Complainant shall take sample and divide in four parts one for retailer, second one to Government analyst, third one to the court and fourth one to the manufacturer as required U/s 18(A) of the Act. No portion of sample was sent to the accused but sent to the Bagalkot agency. One report says about sample "Pale Brown Colored Circular Biconvex Shaped Enteric-Coated Tablets packed in blisters" and another report says about sample "Brown Colored Round Tablet in Aluminum Strip". Samples sent to both the labs may be of different medicine. Final report was submitted on 21.01.2017 to the Drugs

Controller, Bengaluru, sanction was received 15.05.2017 and complaint was filed on 07.12.2018, 19 months after sanction without explanation. Accordingly, it is prayed to allow the application.

4. Learned Public Prosecutor filed objections and reiterated the entire case of the prosecution and Sec.23 of the Drugs and Cosmetics Act, 1940. According to the prosecution complainant followed all the provisions before filing of complaint, sufficient material is there to frame the charge and try the accused. Grounds made out are not acceptable and application is liable to be rejected. Accordingly, it is prayed to reject the application.

5. Learned counsel for the accused has relied upon the following orders;

1. Writ Petition No.3447 of 2023 (GM-RES) M/s Vidhyasha Pharmaceuticals & others Vs. State of Karnataka.
2. Criminal Appeal No.668 of 2009 The State by Assistant Drugs Controller, Udupi Circle, Udupi Vs. M/s Anchor Pharma Pvt. Ltd., & others.

6. Heard both the sides and perused the records thereafter, following points arise for determination:

1. Whether the sufficient grounds are there for proceeding against the accused?

2. What order?

7. My findings to the above points are as under:

Point No.1 In the negative;

Point No.2 As per final order for the following

REASONS

8. **Point No.1**: Case made out by the prosecution, is that, accused No.2 the proprietor of accused No.1 the manufacturing Unit in Plot No.2, Industrial Area, Raja Ka Bagh, CPO Giora-176201, Tehsil, Nurpur, District Kangra (H.P) manufactured medicines/drugs namely, Rebeprox (Rebeprazole Sodium tablets) IP-20mg, a prohibited spurious drug, supplied to Haveri via Bagalkot. Hence, prosecution alleges the said offences.

9. Other facts are that, on 14.05.2015 complainant party went to M/s Raj Agencies, Haveri the shop of Rajesh S.Lodaya (shop owner) and purchased 4x5x10 tablets Rabeprox-20 (Raberazole Sodium Tablets), B.No.T-150116 having manufacture date as January, 2015, expiry date

December, 2016 manufactured by the accused Nos.1 and 2 for legal sample and sent one portion of sealed sample to Government Analyst, Drugs Testing Laboratory, Hubli in the form No.18 on the same day for analysis as required U/s 23 of the Act. On 04.01.2016, CW.1 received test report in form No.3 from said laboratory and came to know that, said drug is not of standard quality, issued a notice U/s 18(A) & (B) of the Act to the shop owner on 05.01.2016 to disclose the source of acquisition of said drugs and produced invoices along with test report in form No.13. CW.1 addressed the letter dated 01.01.2016 to the Government Analyst, Karnataka Regional Test Laboratory, Hubli for Assay Test report of said drug and on the same day he received letter dated 17.01.2016 of shop owner and came to know that, shop owner purchased said drugs from M/s Maxima Health Care, Bagalkot (distributor) and details of invoices. CW.1 issued a letter dated 08.01.2016 U/s 18A & 18B of the Act by RPAD along with copy of test report in form No.13 and sealed portion of purchased drugs to the distributor M/s Maxima Health Care, Bagalkot as required U/s 25(2) and 23(4)(iii) of the Act. Distributor addressed a letter dated

19.01.2016 and confirmed the supply of the said drug to shop owner. CW.1 addressed letter dated 11.01.2016 to the Assistant Drugs Controller, Bangalore Sub-Division, Bangalore and informed the details of supply of said drugs on 18.01.2016. CW.1 received permission from the drugs controller State of Karnataka, Bangalore to visit the manufacture site for further investigation. On 27.01.2016, CW.1 the complainant received letter dated 19.01.2016 and invoice from distributor that, said accused purchased drugs from accused Nos.1 and 2. On 27.01.2016 CW.1 sent a copy of test report in form No.13 to the accused No.1. On 12.02.2016, accused No.1 addressed a letter to the complainant that, he is not agreeing with the opinion of Government Analyst and challenge the report within 28 days as required U/s 25(4) of the Act. On 19.02.2016, complainant forwarded report to the Drugs Controller Karnataka, Bangalore. On 02.03.2016, CW.1 received a letter with enclosures dated 29.02.2016 from CW.5 that, "the sample failed with respect to the test for identification, it is concluded that, contents of Rebeprazole Sodium Assay is nil" and identification of said drug is not of standard quality. On

09.03.2016, Assistant Drugs Controller, Bagalkot seized the drugs from distributor under form No.16 and intimated the complainant vide letter dated 14.03.2016. On 20.04.2016 complainant went to Himachal Pradesh, submitted letter to Drug Controller and licencing authority of said State for manufactures licence details and memorandum of articles of association with a request to send the jurisdictional drug controller for further investigation. On 20.04.2016 complainant visited the production unit of accused No.1 along with local officers. Proprietor who was present there has admitted the production of drugs under question and produced invoice having sold to Bagalkot. Proprietor furnished information that, accused No.2 being approved manufacturing chemist is responsible for the product. Accused No.2 also admitted the production and identified the drugs and produced statement and documents narrated at para No.21 of the complaint. Hence, it is alleged that, accused No.1 the firm and accused No.2 proprietor the approved manufacturing chemist have violated the provisions and committed the alleged offences.

10. Complainant submitted a letter dated 10.05.2016 to the Drugs Controller Karnataka, Bengaluru with a request to permit to prosecute the accused. He also filed an application before the court to forward sample to the Director Central Drugs Laboratory, Kolkata for test and report. Court directed to file complaint first and then apply for test.

11. On 24.08.2016, complainant filed Miscellaneous application before this court in CrI.Misc.No.698/2016 and sample was forwarded to Central Laboratory in the said case. On 11.01.2017, report in form No.2 was received from Central Laboratory that, drugs is not of standard quality.

12. On 21.01.2017, complainant submitted final report to the drugs controller Karnataka, Bengaluru for permission to prosecute the accused, received permission dated 15.05.2017 on 19.05.2017. On 19.05.2017 complainant received letter from the Drugs Controller cum Drugs Licencing Authority, Dharmashal, Himachal Pradesh that, permission to manufacture and distribute the drug is cancelled vide letter dated 08.05.2017. Accordingly, it is prayed to take necessary action against the accused.

13. A complaint was filed before learned Prl. Civil Judge & JMFC., Haveri on 30.03.2021. Learned Magistrate took cognizance, registered the case and issued summons to the accused, accused appeared and got released on bail. Matter was posted for plea thereafter, for committal vide order dated 07.06.2022 and case was committed for trial vide order dated 03.04.2024.

14. After receipt of records and committal order this case was registered and summons was issued. Accused appeared and got released on bail and filed this application on the grounds narrated in the foregoing paragraphs.

15. After careful consideration of the case made out by the complainant, it can be gathered that, a medicine was manufactured by the accused, he supplied to the Bagalkot for distribution and distributor supplied to the retailer in Haveri. Complainant party purchased sample from a shop in Haveri, divided the sample into portions and sent one portion to Hubli lab, obtained report, came to know that, medicine was prohibited spurious drug. It was informed to shop at Haveri. Said shop owner furnished information regarding distributor. A portion of sample was sent to distributor.

Distributor was questioned. He furnished the details of manufacturer. Drug available with the distributor was seized. A raid was conducted over the manufacturing company. Sample was shown to said company and proprietor. One portion of sample was sent to Central Drugs laboratory Kolkata.

16. Sec.23(4) of the Act is relevant for the purpose of this application. Said Section reads as under and underlined portions are in respect of facts of this case;

“23(1).....

(2).....

(3).....

(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:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;
(sent to Hubli)

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug 2 [or cosmetic]; and (produced before the court and sent to Kolkata lab)

(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. (Sent to distributor)”

17. It is necessary to go through the Sec.18A of the Act to see that, whether Section 23(4)(iii) is complied with or not. Hence, said provision is reproduced below;

“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.”

18. Sec.18A makes it clear that, if the drug is not seized from the manufacturer or his agent, the person having possession of drug shall furnish the name and address the

person from whom it was acquired. Words not being manufacturer imply that, name and address of the manufacturer needs to be furnished. Shop owner furnished name and address of the distributor and distributor furnished name and address of the manufacturer and manufacturer is the accused.

19. According to the prosecution, a portion of sample needs to be given to the person whose address the shop owner (vendor) furnishes and not to the manufacturer. The words every person used in Sec.18A presuppose that, persons who comes into picture during investigation shall furnish the source till it reaches the address of manufacturer. Therefore, argument of prosecution that, no portion needs to be given to manufacturer is not acceptable.

20. Therefore a portion of sample needs to be given to the manufacturer accused. Though, Sec.23(4) is a procedure for the complainant, Sec.23(4) (iii) gives a right to the manufacturer. If a portion of sample is not furnished to the manufacturer his right would be infringed and charge would be groundless. Therefore, no sufficient grounds are there for proceeding against the accused.

21. Hon'ble High Court of Karnataka laid down a law in this regard in WP No.3447/2023 (GM-RES) the judgment cited by the accused referred to above. Facts of said case are similar to the facts of this case.

22. It is not in dispute that, no portion of sample was furnished to the accused as required U/s 23(4)(iii) of the Act. Hence, no sufficient grounds are there for proceeding against the accused for failure of complainant to comply with the said provision. Therefore, accused is entitled to an order of discharge. Accordingly, point No.1 is answered in the negative.

23. **Point No.2**: For the foregoing reasons, I proceed to pass the following:

ORDER

Application U/Sec.227 of Cr.P.C., filed by accused is hereby allowed and accused is discharged of the offences punishable Under Sec.27(c) r/w Sec.17B(a) and 27(d) r/w Sec.18(a)(i) of the Drugs and Cosmetics Act, 1940.

(Dictated to the Stenographer Grade-I, transcribed by him, revised and corrected by me, signed and then pronounced in the open Court on this the 17th day of June, 2026.)

(Biradar Devindrappa N)

Prl. District and Sessions Judge,
Haveri.