

MHKO030001972015

Reg. Cri. Case No. 52/2015

Order Below exh. 35.

This is an application under Section 239 of the Criminal Procedure Code, 1973 for the discharge of the accused No.1 to 3.

02. The accused No.1 to 3 have stated that accused have valid license duly issued by FDA. The Drug Inspector has not found any stock of Spasmo-Proxyvon capsules from Accused No. 1 to 3 . Nothing has been recovered from any accused or M/s Janaki Pharma Agencies, Gadhinglaj. Accused has sold out the entire stock from time to time to M/s Janaki Pharma Agencies, Gadhinglaj. Statements of Laxman Anna Solankure, Dheeraj Mallu Gavrayi recorded by police clearly show that the goods were sent by accused to M/s Janaki Pharma Agencies, Gadhinglaj. Though M/s Janaki Pharma Agencies, Gadhinglaj has denied the transaction, they didn't take any action against the alleged false bills against the accused No.1 to 3. Accused No.4 is the Medical Representative of the manufacturer. In the case of Criminal Writ Petition No. 1373/2000, the Hon'ble Bombay High Court has held that the Medical Representative need not require separate drug license for carrying the goods sold by the stockist or the retailer. In that case Accused No.3 was Petitioner. Entire record of the Accused No. 1 to 3 has been kept in computerized system. There is no question to keep the carbon copies as per Section 18(b). Its copies can be given to the FDA when demanded at anytime. Prosecution has suppressed material facts from the court. Entire investigation was carried out with ulterior

motive and it is partisan. On these grounds, they prayed to be discharged from the offence.

03. My Learned Predecessor has called the say of the Public Prosecutor and the original complainant.

04. Learned Assistant Public Prosecutor has resisted the application by filing her say on the backside of it. She contended that the case is filed for the offence under Section 420, 468, 471 r/w 34 of the Indian Penal Code, 1860. Compliant is filed against all the accused. Role of each accused can be ascertained after trial. Say of original complainant is necessary. Offences are relating to the medicines which are hazardous to the health. Statements of the witnesses disclose the names of the accused. Hence she prayed that the application may be rejected.

05. Original Complainant has filed his say at Exh. on 20/9/2019. He contended that Accused No. 1 to 3 have sold the Spasmo-Proxyvon Capsules to accused No.4 , who is not having the requisite license for purchase, storage or sale of any drugs and thus contravened Section 18(a)(vi) r/w Rules 65(5)(1), 65(5)(2), 65(6) and License Condition 20B, condition 2 and 3 punishable under Section 27(d), Section 18(c) punishable under Section 27(b)(ii) and Section 18B punishable under Section 28A of the Drugs and Cosmetics Act, 1940 and the rules thereunder 1945. Accused No. 1 to 3 have violated the conditions of the License, violated the rules and Sections of the Drugs And Cosmetics Act, 1955. Accused No. 1 to 3 have sold huge stock of Spasmo-Proxyvon (Dextropropoxyphene) capsules from January, 2013 to April, 2013. Accused No.1 has stated in his statement on 13/7/2013 that between January, 2013 to April, 2013 every time

he has handed over the stock to Accused No.4, though the invoice is in the name of M/s Janaki Pharma Agencies, Gadhinglaj. Hence, there is no question of transporter. Sales Representative of the manufacturer can promote the sale of goods, he can not deliver the drugs. He can transport the physicians samples and not the salable goods. As per Rule 65(5)(2) of the Drugs and Cosmetics Act, 1955, the licensee should preserve the carbon copies of cash or credit memo for three years. The Complainant has complied all the mandatory provisions of the Act. On these grounds he prayed for the rejection of the application.

6. Perused the application, say and record of the case. Heard Learned Advocate for the Accused No. 1 to 3 and Learned A.P.P. for the State.

7. This is a case instituted on police report. Complainant Mahesh Balaji Kavatikwar is Drug Inspector working at Kolhapur. The Government of India published Gazette on 23/5/2013 and banned production, sale and distribution of drug containing Dextropropoxyphene with immediate effect. On the basis of secret information, he visited and inspected M/s Mahaveer Agencies, Bhavani Mandap, Kolhapur on 13/7/2013. Accused No.1 to 3 are its partners. Accused No. 1 to 3 have purchased 2,85,120 Spasmo-Proxyvon capsules, containing Dextropropoxyphene from M/s Wockhardt Ltd during the period January, 2013 to April, 2013.

8. On inquiry, accused have told him that they have sold the entire stock to M/s Janaki Pharma Agency, Gadhinglaj through Accused No. 4, who is the Medical Representative of M/s Wockhardt Ltd. On 14/7/2013 Drug Inspector visited M/s Janaki Pharma Agency,

Gadhinglaj. On inspection, he does not found any stock of said tablets with him. The owner has flatly denied that he has purchased the stock from Accused No. 1 to 3. Thus, accused No. 1 to 3 alleged to have sold the banned drug to person not holding proper license. Thus, accused alleged to have contravened Section 18(a)(vi) r/w Rules 65(5)(1), 65(5)(2), 65(6) and License Condition 20B, condition 2 and 3 punishable under Section 27(d), Section 18(c) punishable under Section 27(b)(ii) and Section 18B punishable under Section 28A of the Drugs and Cosmetics Act, 1940 and the rules thereunder 1945.

9. The complainant has not found any stock of drug containing Dextropropoxyphene from any accused and prima facie, there is no material on record to show that accused No. 1 to 3 have sold that drug after publication of official gazette on 23/5/2013. Therefore, Accused No. 1 to 3 can not be tried for the contravention of the official gazette dated 23/5/2013 suspending the production, sale and distribution of drug containing Dextropropoxyphene.

10. There is prima facie material on record which shows that the accused No. 1 to 3 have not kept the carbon copies of bills as per Rule 18(b). Prima facie there is material to show that accused No. 1 to 3 have contravened Section 18(a)(vi) r/w Rules 65(5)(1), 65(5)(2), 65(6) and License Condition 20B, condition 2 and 3 punishable under Section 27(d), Section 18(c) punishable under Section 27(b)(ii) and Section 18B punishable under Section 28A of the Drugs and Cosmetics Act, 1940 and the rules thereunder 1945. Its merits can be decided at time of trial.

11. Accused No. 1 to 3 alleged to have sold the banned drug to Accused No.4, who is not holding proper license. Learned Advocate

for the Accused No. 1 to 3 argued that Accused No 4 is a Medical Representative. He need not require the license to carry the drug. The Company is having the valid license. However, considering the proviso to Section 18 of the Drugs and Cosmetics Act, 1940, the Medical Representative can carry the drugs sold by company, stockist to Retailer, or on prescription for his use as Registered Medical Practitioner or to give samples. Whether accused No. 4 has order of purchase of 2,85,120 capsules and he is going to use that capsules as samples, can be decided after evidence. A distributor or dealer is also liable under Section 18 read with 27. The defenses under Section 19 would be available to a dealer and distributor, which are not available to the manufacturer, but that would also always be a question of fact to be decided during the trial. Therefore, the application is devoid of merits and liable to be rejected. Therefore, I proceed to pass the following order-

ORDER

1. The Application Exh.35 is hereby rejected.
2. Accused No. 1 to 3 shall remain present on the next date for framing of charge in the Court.

Kolhapur
Date – 29/11/2019

(G. A. Karajgar)
Judicial Magistrate First Class,
Court No.12, Kolhapur