IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -I, PERUMBAVOOR

Present: Sri.Anish Babu M.B., Judicial First Class Magistrate

Dated this the 12th day of March, 2024/ 22nd day of Phalguna, 1945

CALENDAR CASE No. 1311/2014

Complainant : State-rep. by the Drugs Inspector, Office of the Drugs Inspector, Pathananthitta.
(By Dr. Geetha K.K APP, JFCM-I)

Accused No.1 & 2 : 1. Mahesh Laborate Pharmaceuticals India Ltd, Registered office E-11, Undl Area, Panipat, Indian, represented by Ajay Bhatia, Director, Laborate Pharmaceuticals Ltd, residing at 584-L, Mode; Town Panipat, Hariyana. District.

2. Sunil Vasishth, General Manager, Laborate Pharmaceuticals India Ltd 51, Industrial Area Gondpur, Paonta Sahib, Sirmour, Himachal Pradesh, residing at 195/4, Adarsh Clolony, Rajban road, Paonta Sahib, Himachal Pradesh
(By Adv. T. N. Arunkumar)

Offence : U/ss. 27 (d) of the Drugs & Cosmetics Act, 1940.

Plea : Guilty

Finding : Guilty

Sentence or order : 1. Accused 2 is convicted and is sentenced to undergo simple imprisonment till the rising of the court and a fine of Rs.20,000/- for the offence punishable under Section 27 (d) of the Drugs & Cosmetics Act, 1940. In default of payment of the fine amount, he shall undergo simple imprisonment for one month for the aforesaid offence;

2. The accused No.1 company, is also convicted and sentenced to a fine of Rs.20,000/- for the offence punishable under Section 27 (d) of the Drugs & Cosmetics Act, 1940. In default of payment of the fine amount, the District Collector concerned is directed to realise the same from the assets of the company; and

3. The case against accused No.3 is refiled as CC No.....

DESCRIPTION OF ACCUSED

Name	Father's name	Calling	Residence	Age
Ajay Bhatia,	---	--	584-L, Mode; Town Panipat, Hariyana. District.	--
Sunil Vasishth	--	--	195/4, Adarsh Clolony, Rajban road, Paonta Sahib, Himachal Pradesh	--

DATE OF

Offence	Complaint	Appearance of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order
07.11.08	15.10.11	--	--	--	--	12.03.24

The case against accused Nos. 1 & 2 having been finally heard today, the court on the same day passed the following:

JUDGMENT

This case is a case instituted on the basis of a complaint filed under Section 32 of the Drugs & Cosmetics Act, 1940 (hereinafter referred to as 'the Act').

2. The gist of the complaint is as follows:

Accused No. 1 is a limited company engaged in the manufacture of and sale of drugs in India and accused No.2 is its General Manager (Originally this accused was arrayed as accused No.6). The Drugs Inspector (Intelligence Branch) had taken a sample of the drug tablet Pantazole (Batch number PNCT001) manufactured by accused No.1 from the premises of the English

Company at Perumbavoor after following the procedure. The said sample was analysed at the Drugs Testing Laboratory at Thiruvananthapuram wherein it was declared that the drug under analysis was not of standard quality due to the reason that the content of the Pantoprazole was not within the prescribed limit. Thereafter, the second portion of the subject drug was sent for testing at the Central Drug Testing Laboratory and that report also declared the drug under analysis as not of standard quality. Thereby the accused contravened the provisions of Section 18(a)(i) of the Act punishable under Section 27(d) of the Act.

3. The accused Nos.1 & 2 are present and their learned counsel was also present. Copies of records relied on by the prosecution were already furnished to the learned counsel for the accused. Accused Nos.1 and 2 moved CMP No. 823/2024 stating that accused No.2, the authorised person to represent accused No.1 is a kidney patient and due to the severity of the disease, his left kidney was removed. Now he is surviving with one kidney and in such a condition the accused is not in a position to travel frequently to attend the case as he has to travel a long distance from his present place of Himachal Pradesh. Hence it is prayed that they may be allowed to plead guilty and remit the fine only. In the light of the petition moved by the accused Nos.1 and 2, particulars of the offence were read over and explained to them to which they pleaded guilty. The plea of

guilty made by the accused is accepted as it appeared to have been made voluntarily. Then the question arises whether this court can lawfully pass the sentence authorised under the act as the penal provision mandates that the court shall not pass a fine amount less than twenty thousand rupees. Hence, for the sake of convenience, Section 27(d) of the Act is reproduced hereunder;

> **27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter**.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—
>
> (a) *******
>
> (b) *******
>
> (c) *******
>
> (d) (d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years 5 [and with fine which shall not be less than twenty thousand rupees]:
>
> Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

At this juncture, it is pertinent to note that any Judicial Magistrate of the first class can lawfully pass any sentence authorised under the Act in view of the specific provision provided under Section 36. Likewise, Section 34 of the Act provides that ‘where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence

and shall be liable to be proceeded against and punished accordingly.' The provision extends the concept of vicarious liability to the persons responsible for the conduct of the business of the company in a case where the offence has been committed by the company. Hence both accused are liable to be punished for the offence alleged in the complaint.

4. As per proviso to Section 27(d) of the Act, the court can pass a sentence of imprisonment for less than one year after recording adequate and special reasons in the judgment. Here, accused No.2 has specifically stated that he is a kidney patient and his left kidney has already been removed. The accused has also produced a Discharge Summary issued by the Sir Ganga Ram Hospital, New Delhi. On perusal of the same, it is revealed that the accused No. 2 had undergone a Left Radical Laparoscopic Nephrectomy. So, it would be difficult to travel such a long distance as he is now residing in Himachal Pradesh. No previous involvement of the accused No.2 in similar crimes has been brought to the notice of the court. Hence, considering the present health condition of the accused No.2 and the whole facts and circumstances of the case, I am satisfied that there are sufficient grounds to invoke the proviso to Section 27(d) of the Act. Based on that, both accused are found guilty of the offence under Section 27 (d) of the Act and they are convicted thereunder.

5. I find that the benevolent provisions of the Probation of Offenders Act do not apply to the facts of this case. Heard the accused on the question of sentence. They pleaded to take a lenient view in the matter of sentence.

6. Since the accused No. 1 company is a juristic person, as such, it is impossible to execute a sentence of imprisonment against the company. Having considered the submission made by the accused No. 2 and also the nature of the offence committed and also the present health condition of the accused No.2, this court is of the view that a substantive sentence is to be imposed as follows.

7. In the result:

1. Accused 2 is convicted and is sentenced to undergo simple imprisonment till the rising of the court and a fine of Rs.20,000/- for the offence punishable under Section 27 (d) of the Drugs & Cosmetics Act, 1940. In default of payment of the fine amount, he shall undergo simple imprisonment for one month for the aforesaid offence;

2. The accused No.1 company, is also convicted and sentenced to a fine of Rs.20,000/- for the offence punishable under Section 27 (d) of the Drugs & Cosmetics Act, 1940. In default of payment of the fine amount, the District Collector concerned is directed to realise the same from the assets of the company; and

3. The case against accused No.3 is refiled as CC No.....

Pronounced by me in open court, this the 12th day of March, 2024.

Sd/-

Judicial First Class Magistrate -I, Perumbavoor