



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

I. **CRR-1830-2014**
Ved Parkash and Another **Petitioners**
Vs.
State of Haryana Respondent

II. **CRR-1860-2014**
Attar Singh Phogat **Petitioner**
Vs.
State of Haryana through District Drug Inspector Respondent

III. **CRR-1861-2014**
Bhupinder Singh **Petitioner**
Vs.
State of Haryana through District Drug Inspector Respondent

Reserved on: 18.03.2025
Pronounced on: 25.03.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sanket Bhandari, Advocate for the
petitioners in CRR-1830-2014.

Mr. Jagjeet Beniwal, Advocate for the
petitioner in CRR Nos.1860 and 1861 of 2014.

Mr. R.K.S. Brar, Addl. AG, Haryana.

DEEPAK GUPTA, J.

The three criminal revisions titled above have arisen out of the same case in the following facts and circumstances.

2. Complaint was filed by State of Haryana through District Drug Inspector under Section 18(a)(i) read with Section 17A, 17B and 18B of The Drugs and Cosmetics Act, 1940 [*hereinafter referred as 'the Act'*] and Rules made



thereunder, against as many as ten accused as named below:

Manufacturer:

- 1) M/s Burnent Pharma 974 MIE, Bahadurgarh
- 2) Sh. Surender Kumar Seth son of Inder Sain
- 3) Sh. H.S. Rathi son of Sh. Sahu Ram
- 4) Sh. Jai Gopal son of Sh. Luxami Chand
- 5) Sh. Darshan Arora son of Sh. Des Raj

Dealer/Distributor:

- 6) M/s Kavita Medico Agencies, Rohtak
- 7) Sh. Ved Parkash son of Sh. Gian Dev

Retailer:

- 8) M/s Super Medicos, Charkhi Dadri
- 9) Sh. Bhupinder Singh son of Sh. Dalip Singh
- 10) Attar Singh Phogat son of Sh. Bholu Ram Phogat

3.1 As per complaint, on 24.07.2003, Drug Inspector, Bhiwani visited the premises of M/s Super Medicos i.e. accused No.8 along with Medical Officer, General Hospital, Charkhi Dadri, where accused Nos.9 and 10 i.e. proprietor and pharmacist of the said retailer were present. Vials of Diclofenac Sodium Injection 12 x 30m bearing on its label B>No.DF-04, Date of Manufacture 8/2002, Expiry Date 07/2004, manufactured by M/s Burnet Pharma 9074 MIE Bahadurgarh 124507 were found, along with other allopathic drugs stocked for sale. Samples of the aforesaid drugs were taken as per prescribed rules.

3.2 On analysis through the Government Analyst, Haryana of one of the drug sample, the same was found to be not of standard quantity, as it contained small white particles as suspended matter; and assay of Diclofenac Sodium was less than IP (Indian Pharmacopoeia). As per standards in IP limits, drug was required to be free from particulate matter, hence, the injection was not fit for consumption for human beings and was injurious to health. The drug Diclofenac Sodium (DS in short) claimed per ML on the label as 25mg, whereas the Government analyst found it to be 2.6mg/ml and thus, drug falls within the definition of being spurious, the manufacture and sale of which is prohibited under Section 18(a)(i) of the Act.



3.3 Notice under Section 18-A of the Act was issued to accused Nos.8 and 9 on 05.11.2003 by the Drug Inspector, Bhiwani requiring them to disclose the name, address and other particular of the person, from whom they had acquired the drug. The said accused disclosed the name and address of M/s Kavita Medico Agencies Rohtak i.e. accused No.6, from whom they had acquired the drug. Purchase bill number 4218 dated 22.07.2003 was also produced by them.

3.4 At this, the Drug Inspector, Bhiwani issued notice to accused Nos.6 and 7 i.e. M/s Kavita Medicos and its proprietor Ved Parkash under Section 18-A of the Act requiring them to disclose the name and particulars of the persons, from whom they had acquired the drugs. As per the reply received from them, the name of the manufacturer was M/s Burnet Pharma i.e. accused No.1, from whom they had acquired the drug. As per the label found on the drug while sampling, the manufacture of the drug was accused No.1. Accused Nos.6 and 7 also enclosed copy of the purchase bill No.1395 dated 28.11.2002 issued by accused No.1.

3.5 Upon the aforesaid information being supplied, Drug Inspector, Bhiwani issued notice on 12.01.2004 under Section 18-B to accused No.1 i.e. manufacturing firm through its partner- accused No.2 along with copy of the test report of the drug in question and a sealed portion of the sample. Accused No.2 Surender Kumar Seth, disclosed that accused No.4 Jai Gopal was the manufacturing chemist and person responsible to manufacturing the drug in question; whereas accused No.5 Darshan Arora owes the responsibility of testing the drugs and releasing the same for sale as per the undertaking submitted to the licensing authority.

3.6 It was alleged in the complaint that accused Nos.2 and 3 are in the control of all operations of manufacturing firm i.e. M/s. Burnet Pharma, Bahadurgarh including those of manufacture and sale of drugs being the partners of the said firm and that they were present during inspection showing their direct control over the manufacturer of the drugs and as such, they are responsible persons for the manufacture and sale of the spurious, adulterated and non-



standard quality of drug in context.

3.7 On the request of accused No.4 Jai Gopal, second sample of the drug was also sent to Central Drugs Laboratory, Calcutta but the result was the same. After taking requisite permission from the competent authority, prosecution was then launched against all the accused, as have been named above so as to prosecute them in this complaint.

4. On finding prima facie case, the accused were charge-sheeted under Section 18(a)(i) read with Section 17-B, 17-A and 18-B of the Drugs and Cosmetics Act, 1940. Accused Nos.3 to 5 were declared proclaimed offenders. The other accused, who faced trial pleaded not guilty and claimed trial. However, after holding the trial, the Court of learned Chief Judicial Magistrate, Bhiwani held all of them to be guilty of Section 28 and 27(b)(i) of the Act vide judgment dated 12.03.2011. Vide a separate order dated 15.03.2011, the accused were sentenced as under:

Under Section 28 of the Act	RI for one year and fine of ₹1,000/- with default sentence of 03 months
Under Section 27 (b)(i) of the Act	RI for one year and fine of ₹5,000/- with default sentence of 03 months

Both the substantive sentences were directed to run concurrently.

5. Against the aforesaid conviction and sentence. three separate appeals were filed. Accused No.2 Surender Kumar Seth as one of the partners of the manufacturing firm filed one appeal. Second appeal was filed by distributor firm i.e. accused No.6 and its proprietor Ved Parkash; whereas third appeal was filed by accused Nos.9 and 10 i.e. proprietor and pharmacist of the retailer firm M/s Super Medicos. However. all these three appeals were dismissed by Id. Additional Sessions Judge, Bhiwani vide common judgment dated 06.06.2014.

6. Against the aforesaid dismissal of the appeals, these three revisions have been filed. Criminal Revision No.1830 of 2014 has been filed by the distributor firm i.e. M/s Kavita Medico Agencies and its proprietor Ved Parkash i.e. accused Nos.6 and 7. Criminal revision No.1861 of 2014 has been filed by ac-



cused No.9 – Bhupinder Singh i.e. proprietor of retailer firm M/s Super Medicos; whereas, criminal revision No.1860 of 2014 has been filed by accused No.10 Attar Singh i.e. pharmacist of the retailer firm i.e. M/s Super Medicos.

7. Arguments in all the three revisions have been heard together, as they have arisen out of same impugned judgment.

8.1 It is contended by learned counsel representing the distributor firm M/s Kavita Medicos and its proprietor that as per the allegations, the drug in question was purchased from the said firm by retailers i.e. accused No.8 & 9 and that on the notice received by these petitioners i.e. distributors, they had disclosed to the Drug Inspector the name of the manufacturer i.e. accused No.1 M/s Burnet Pharma under Section 18-B of the Act. That fact is duly admitted in para Nos.6 and 7 of the complaint itself and as such, Courts below committed a grave error in convicting the petitioners under Section 28 of the Act. It is further contended that petitioners had disclosed the full particulars of the manufacturer and so, the petitioners were protected under Section 19(3) of the Drugs and Cosmetics Act and as such, their conviction under Section 27(b)(i) has been wrongly recorded. With these submissions, prayer is made for setting aside the conviction and sentence as imposed by the trial Court and upheld by the first Appellate Court.

8.2 On behalf of petitioners Bhupinder and Attar Singh, similar contentions have been raised by learned counsel representing them to the effect that on being notified, they had disclosed to the Drug Inspector, the name of the distributor firm, from whom they had acquired the drug i.e. M/s Kavita Medicos and as such, they were not liable to be prosecuted under Section 28 of the Act. They also claimed protection under Section 19(3) of the Act and so, contended that their conviction under Section 27(b)(i) of the Act has been wrongly recorded. With these submissions, counsel representing these petitioners also prayed for their acquittal by setting aside the conviction and sentence recorded by the Courts below.

9. On the other hand, learned State counsel representing the respon-



dent has defended the judgments as passed by the Courts below and prayed for dismissal of all the revisions.

10. This Court has considered submissions of both the sides and have appraised the record carefully.

11. Apart from Section 27(b)(i), conviction of the petitioners has been recorded under Section 28 of the Act. Section 28 is read as under:-

“28. Penalty for non-disclosure of the name of the manufacturer, etc.—Whoever contravenes the provisions of section 18A or section 24 shall be punishable with imprisonment for a term which may extend to one year, or with fine, which shall not be less than twenty thousand rupees or with both.”

12. As is evident, Section 28 of the Act is attracted, when there is contravention of the provisions of either Section 18-A or Section 24 of the Act. These provisions read as under:

“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.

24. Persons bound to disclose place where drugs or cosmetics are manufactured or kept. — Every person for the time being in charge of any premises whereon any drug or cosmetic; is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug 1or cosmetic is being manufactured or is kept, as the case may be.”

13. Concededly, Section 24 of the Act is not applicable to the facts of this case. As far as Section 18-A is concerned, every person, not being the manufacturer of the drug or cosmetic or his agent for the distribution thereof, is required to disclose to the inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

14. In the present case, petitioners before this Court are either the retailer firm and its representative; or the distributor firm and its proprietor. It is



the own case of the drug inspector as mentioned in the complaint that after receiving the report of the Government Analyst, notice was issued to M/s Super Medicos i.e. the retailer firm to disclose the name, address and other particulars of the person from whom they had acquired the drug and upon this notice, accused Nos.8 and 9 disclosed the name and address of M/s Kavita Medicos Agencies, Rohtak, from whom they had acquired the drug and even produced purchase bill No.4218 dated 22.07.2003 in this regard. Thus, once the retailers had provided all the necessary details as required under Section 18-A of the Act to the Drug Inspector, there was complete compliance of Section 18-A of the Act and as such, the conviction of the petitioners i.e. proprietor and pharmacist of the retailer firm under Section 28 of the Act is absolutely illegal and not warranted. Said conviction is hereby set aside.

15. Similarly, after being disclosed about the name, address and other particulars of the distributor firm by the retailers, when the Drug Inspector notified to accused Nos.6 and 7 i.e. the distributor firm and its partner as to from whom they had acquired the drugs, the Drug Inspector received the reply of these accused N: 6 & 7, as per which they had purchased the drugs from M/s Burnet Pharma, Bahadurgarh i.e. accused No.1. Even as per the label found on the drug, while taking the sample, the manufacturer's name of the drug was mentioned as accused No.1. Accused No.6 had also enclosed copy of the purchase bill No.1395 dated 28.11.2002 issued by accused No.1 in this regard. Thus, the distributor firm also made compliance of Section 18-A of the Act by disclosing all the particulars of the manufacturing firm and once it is so, the conviction of these petitioners M/s Kavita Medicos and Ved Parkash under Section 28 of the Act is held to be unsustainable and so, the same is set aside.

16. Conviction of all the petitioners has also been recorded under Section 27(b)(i) of the Drugs and Cosmetics Act, 1940. This provision reads as under:

"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) xxxxxxxx

(b) any drug—

(i) deemed to be adulterated under section 17A but not being a drug referred to in clause (a), or

(ii) without a valid licence as required under clause (c) of section 18,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine, which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

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 three years and of fine of less than one lakh rupees”

17. Offence under Section 28(b)(i) is punishable, in case the accused manufactures for sale or for distribution or sells or stock or exhibits or offers for sell or distributes any drug, which is deemed to be adulterated under Section 17-A but not being a drug referred to in clause (a); or without a valid licence as required under clause (c) of Section 18.

18. In the present case, it is not the allegation of the complainant that any of the petitioners i.e. retailer firm or the distributor firm were not having the valid licence as required under Section 18 (c) of the Act.

19. As far as the contravention of Section 17-A is concerned, it reads as under:

“17A. Adulterated drugs.— *For the purposes of this Chapter, a drug shall be deemed to be adulterated,—*

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have



been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.”

20. In the present case, as has been noticed by both the Courts below, the report of the Government Analyst as well as that of the Central Drug Laboratory, found the sample drug on analysis to be not of standard quality, as it contained small white particles as suspended matter and assay of Diclofenac Sodium per ml was less than the IP i.e. Indian Pharmacopoeia. The drug has been found to be spurious as well as adulterated within the meaning of Section 17-A and 17-B of the Act, the manufacturer for sale, and sale of which is prohibited under Section 18(a)(i) of the Act. However, conviction of the petitioners has not been recorded for manufacturing or selling spurious drugs as per Section 17-B of the Act and rather, conviction has been recorded only for contravention of Section 17-A of the Act. Reports of the Government Test Laboratory as well as that of the Central Laboratory confirmed that drugs in question, the sample of which was drawn, was found to be adulterated. There can be no dispute to this finding.

21. However, all the petitioners have claimed protection under Section 19(3) of the Act. Section 19 of the Drugs and Cosmetics Act, 1940 read as under:

19. Pleas.—(1) *Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug or cosmetic in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of*



test or analysis, has not been prejudiced by the sale.

(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or adulterated or spurious or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug or cosmetic as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or cosmetic or to conceal its inferior quality or other defects; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug or cosmetic occurring after the vendor or distributor became aware of such intermixture.

(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18, if he proves—

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.”

22. As is evident on perusal of the aforesaid provision, the protection under Section 19(3) is not available either to the manufacturer or to his agent for the distribution thereof. The said protection is available only to a person, who is neither the manufacturer nor the agent for the distribution thereof of the manufacturer.

23. As such, petitioner M/s Kavita Medicos and its proprietor Ved



Parkash cannot claim any protection under Section 19 (3) of the Act being the distributor of the manufacturing firm. In para No.10 of the revision itself, it has been specifically admitted by these petitioners that they were only agents to distribute the drugs and not manufacturers, having effective and genuine licenses to sell the drugs. Once it is found that these petitioners are the agents for the distribution of the drug on behalf of the manufacturer, they cannot claim any protection under Section 19(3) of the Act.

24. As far as petitioners Bhupinder and Attar Singh i.e. representative of the retailer firm M/s Super Medicos are concerned, they can claim protection under Section 19(3) of the Act, provided all the conditions mentioned therein are fulfilled i.e.,

- (i) Drug is acquired from a duly licenced manufacturer, distributor or dealer thereof;
- (ii) That they i.e. retailer did not know or could not with reasonable diligence have ascertained that the drug in question contravened the provisions of the section; and
- (iii) The drug in question while in their possession was properly stored and remained in the same state as when they acquired it.

25. The use of the words '*if he proves -*' mentioned in Section 19(3) makes it quite clear that burden of proof is upon such accused to prove that he is entitled for the protection of the said section.

26. In the present case, no such evidence has been produced by the accused retailers i.e. Bhupinder and Attar Singh that they did not know or with reasonable diligence could not have ascertained that drug in question, the sample of which was drawn in any way contravened the provisions of the Act; and that the drug in question while in their possession was properly stored and remained in same state when they had acquired it. Of course, they had produced before the Drug Inspector the purchase bill to show that they had purchased the drug in question from the licensed agent or distributor of the manufacturing firm but other two conditions to attract Section 19(3) of the Act are not fulfilled.



27. In view of the aforesaid circumstances, it is held that the conviction of the petitioners under Section 27(b)(i) of the Act has been rightly recorded. There is no illegality or perversity in the finding. The said conviction is hereby maintained.

28. Thus, these revisions against conviction are partly allowed by setting aside the conviction recorded under Section 28 of the Act, but maintaining the conviction under Section 27(b)(i) of the Act.

29. As far as the impugned order of sentence is concerned, as per Section 27(b)(i), as it was applicable at the relevant time in July 2003, the minimum sentence provided was one year imprisonment and fine of ₹5,000/-. Trial Court has imposed the minimum sentence as provided in the Act and the Appellate Court has affirmed it.

30. However, it is noticed by this Court that the offence in question was committed way back in July, 2003 i.e. more than 21½ years back. Petitioner Ved Parkash has remained in actual custody for a period of 12 days as per the custody certificate. Petitioner Attar Singh has remained in 16 days actual custody as per the custody certificate. Petitioner Bhupinder has remained in custody since 06.06.2014 to 20.06.2014, as his sentence was suspended vide order dated 20.06.2014 and thus, he remained in custody for a period of 15 days. The sentence of all these petitioners was suspended by this Court in June, 2014 i.e. more than 10 years back. The custody certificates do not indicate that any of the petitioners is involved in any other criminal case.

31. In the aforesaid facts and circumstances, particularly the fact that all the petitioners had in fact acquired the drugs from the manufacturing firm i.e. M/s Burnet Pharma, it will be in the fitness of things, if the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 is extended to them.

32. The said benefit of probation can be granted even in a case, where minimum sentence is provided as has been held by Hon'ble Supreme Court in "**Lakhvir Singh v. State of Punjab**" AIR 2021 SC 555 and reiterated in "**Tarak**



Nath Keshari v. The State of West Bengal” 2023 SCC Online SC 605.

33. As such, the order of sentence as passed by the trial Court and affirmed by the Appellate Court, is hereby modified. Petitioners Bhupinder, Attar Singh and Ved Parkash are hereby directed to be released on probation under Section 4 of the Probation of Offenders Act on entering into their separate bonds in the sum of ₹50,000/- each with two sureties of like amount by each of them, to ensure that they maintain peace and good behavior for the remaining part of sentence, failing which they can be called upon to serve the remaining sentence.

34. At the same time, the petitioners are burdened with the cost of the proceedings as per Section 5 of the Probation of Offenders Act. Petitioners Bhupinder & Attar Singh are directed to pay ₹25,000/- each as cost of proceedings; whereas petitioner Ved Parkash, the proprietor of distribution firm M/s Kavita Medicos is burdened with cost of ₹50,000/- towards the prosecution cost. All the three petitions shall stand disposed of accordingly. Compliance of this order be made within 30 days from the date of this order, failing which their revision petition(s) shall be deemed to have been dismissed. A copy of this order be sent to the Court of learned Chief Judicial Magistrate, Bhiwani for strict compliance. Ordered accordingly.

A photocopy of this order be placed on the file of connected cases.

(DEEPAK GUPTA)
JUDGE

25.03.2025
Neetika Tuteja

Whether speaking/reasoned? : Yes/No
Whether reportable? : Yes/No