

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application 269 of 2023
(M/s Maple Pharmaceuticals Pvt. Ltd. Vs Learned Chairman Drug Court)

Date Order with signature of Judge

Before:
Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: 22.10.2024

Mr. K.A Jahangir advocate for the applicant.
Mr. Mumtaz Ali Shah APG

ORDER

Adnan-ul-Karim Memon, J:- The applicants M/s Maple Pharmaceuticals Pvt. Ltd & 3 others have filed a Criminal Revision under Section 439 of the Cr.P.C. to challenge the trial court's order dated 07.12.2023, whereby, the trial court had dismissed the applicants' application under Section 540 of the Cr.P.C. on the premise that calling government Analyst is no necessary for just decision as a report has already been produced and exhibited with the opportunity of cross-examination to the applicants' side.

2. Brief facts of the case are that the Provincial Inspector of Drugs, Larkana filed a complaint against the applicant company and its officers on October 4, 2020. The charge was framed on April 8, 2021. The prosecution has examined witnesses, and the case is now fixed for the accused's statement. The applicant previously applied for summoning material prosecution witnesses but the application was dismissed on December 7, 2023.

3. The Theme of the arguments of the learned counsel for the applicants is that the applicant company and its officers were accused of selling a substandard medication (Tablet Monis 20mg) based on a test report by Dr. Farnaz Malik, a government analyst NIH, Islamabad, the prosecution identified Dr. Malik as a witness and relied on her test report for the case. Learned counsel for the applicant argued that the order dated 07-12-2023 passed by the trial court dismissed the applicant's application under Section 540

of the Cr.P.C. to call upon a key prosecution witness is illegal and caused prejudice to their case. As per learned counsel, the witness, the Government Analyst of NIH Islamabad, is crucial to the case as she conducted the tests that led to allegations against the applicant's product. The Applicants allege that the NIH Test report deviated from standard testing protocols, raising doubts about its accuracy and reliability. He added that the witness's expert opinion is essential to understand the technical aspects of the case and ensure a fair trial if she is examined on oath. He argued that the Applicant's right to a fair trial, including the right to call witnesses to cross-examine her, is guaranteed under the Constitution as well as the Criminal Procedure Code. He prayed for setting aside the impugned order dated 07-12-2023 and allowing the trial court to summon the Government Analyst of NIH Islamabad for examination and cross-examination.

4. The trial court rejected the defense's application to recall the government analyst witnesses based on their reports, which were already admitted as evidence and subject to cross-examination. The court cited Section 22(4) of the Drug Act 1976 and the Supreme Court's decision in *Meharзад Khan v. The State*, (PLD 1991 SC 430).

5. Section 540 of the Cr.PC empowers courts to summon witnesses, even if they were not initially listed, to ensure fair trials. The decision is required to be based on whether his /her testimony is essential for a just verdict. However, courts must exercise this power cautiously, considering fairness and due process as held in the cases of *The State v. Muhammad Yaqoob* (2001 SCMR 308), *Sajid Mehmood v. The State* (2022 SCMR 1882) *Shah Zain Bugti v. The State* (PLD 2013 SC 160), and *Muhammad Azam v. Muhammad Iqbal* (PLD 1984 SC 95).

6. No cogent reason has been assigned by the applicant's counsel that their case is prejudiced by not calling the government Analyst to to appear in the witness box as his/her report has

already been brought on record and the witness has been cross-examined in open court.

7. Mainly, section 510 Cr. P.C. states that the expert's report must be presented to the trial court before the trial begins. The said provision is reproduced as under:

"510 Report of Chemical Examiner, Serologist, etc.— Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any Serologist, Fingerprint Expert or Fire-arm Expert appointed by Government [or of the Chief Chemist of the Pakistan Security Printing Corporation Limited,] upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under the Code."

8. It is well settled that the report of an expert cannot be used as evidence without taking it on record and exhibiting it to provide an opportunity for cross-examination. The Cr.P.C. allows certain expert reports to be admitted in evidence without calling the expert as a witness. This is to save time and speed up trials. However, the court may still summon and examine the expert if necessary. The admissibility of test reports has been questioned. However, the Qanun-e Shahadat Order (QSO) and Cr.P.C. should be interpreted progressively to give more space to modern forensic science.

9. The term "Chemical Examiner" in section 510 Cr.P.C. is to allow reports of all Government forensic scientists to be per se admissible, to speed up criminal justice. The courts can still summon and examine the expert who prepared the report. However, in the present case, the case is on the verge of conclusion and at this stage remanding the matter to the trial court to summon the Government Analyst of NIH Islamabad for examination will not serve the purpose as the report has already been exhibited without objection. On the aforesaid proposition we are guided by the decision of the Supreme Court in the unreported case of *Ali Haider @ Pappu Vs Jameel Hussain* decided on 07th January 2021 in CrI. Petition No.513/2020.

10. Principally, the trial Court can summon the Government Analyst to clarify any ambiguities in his report. However, the trial did not find any ambiguity in the report and the same was exhibited without objection. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Qaiser Javed Khan vs. the State (PLD 2020 SC 57).

11. Foregoing are the reasons, and without prejudice to the right of the parties at the trial, this criminal Revision Application is dismissed.

JUDGE

JUDGE

Shafi