

**IN THE COURT OF XV METROPOLITAN MAGISTRATE,  
GEORGETOWN, CHENNAI**

PRESENT: Thiru. A.Muralikrishna Anandan, B.A., B.L.,  
XV Metropolitan Magistrate

On Wednesday, this the 16<sup>th</sup> day of February 2022

**Calendar Case No. 2791 of 2014**

CNR No.: TNCH0B-000514-2014

This case having coming up today final hearing before me in the presence of Mr.R.Chander, Additional Central Government Standing Counsel for the complainant and Mr.Davidson Ambrose advocate for the accused; and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

**JUDGMENT**

Serial number of the case	<b>CC.No. 2791 of 2014</b>
The date of the commission of the offence	From 21.09.2012
The name of the complainant	<b>Union of India – represented by: Its Drug Inspector, Mr.V.S.Prabhakar,</b> CDSCO South Zone, Shastri Bhawan Annex, Chennai– 600 006.
The name of the accused persons	<b>A3 Mr.Sanjeev Singal A4 Mr.Harpreet Singh A5 Mrs.Himjyoti Dhir</b>  A3 to A5 are Partners of M/s Quixotic Health Care, No.88A, EPIP Phase-II, Thana, Baddi District, Solan, Himachal Pradesh,  Note: the case against A1-M/s.Quixotic Health Care and A2-Mr.Sathish Singal was split as CC.No.1775/2021 and the same has been disposed of on 08.12.2021
The offence complained of or proved	The accused 3 to 5 have contravened Section 18(a)(1) of Drugs and Cosmetics Act for having manufactured and sold the drug ‘ <b>Oflovis (Ofloxacin Oral Suspension)</b> ’ Batch No.POX-11012, which is not of standard quality and thereby punishable under Section 27(d) of Drugs and Cosmetics Act 1940

	The the accused 3 to 5 have contravened Section 18B of Drugs and Cosmetics Act for having not furnishing necessary documents required by the complainant and punishable under Section 28A of Drugs and Cosmetics Act
The plea of the accused and his examination:	Accused 3 to 5 plead guilty
The Final Verdict	<p>The accused 3 to 5 are found guilty of offence u/s.18(a)(1) R/w 27(d) and 18A R/w.28A of Drugs and Cosmetics Act 1940, They are convicted and for the offence u/s.27(d) the accused 3 to 5 are sentenced to undergo Simple Imprisonment of one day till rising of the court and pay a fine of Rs.20,000/- each.</p> <p>For the office u/s.28A, the accused 3 to 5 shall pay a fine of Rs.20,000/- each. In default, the accused 3 to 5 shall also undergo further Simple Imprisonment for one more month.</p> <p>Total Fine Rs.(20,000 + 20,000) x 3 = 1,20,,000/-.</p>

Reasons for verdict:

1. This case is filed as a private complaint under Section 200 of Cr.P.C. against the accused for the alleged violations of Section 18(a)(i) read with Section 27(d) of Drugs and Cosmetics Act 1940.
2. Since, the Drugs Inspector is a public servant, recording of his sworn statement was dispensed with and this court directly took cognizance of the offence on 12.08.2014 as CC.No.2791/2014 against all the five accused and issued summons to them. 1<sup>st</sup> accused is the partnership firm, and the accused 2 to 5 are its partners. On receipt of summons, M/s.King & Patridge filed Memo of Appearance for A1-Partnership firm and the accused 2 to 5 were not served. However, all the accused filed Crl.OP.No.25784/2015 before Hon'ble High Court and obtained interim stay of proceedings of this case. Therefore, the matter was being adjourned without any progress.
3. This court by order dated 22.11.2019 made an observation that in view of judgment of Hon'ble Supreme Court in Asian Resurfacing Case – C.A.No.1375/2013, the order of stay granted by the High Court would stand vacated as from 30.09.2018. Hence, this court posted the matter for appearance of the accused as there was no

further extension of stay. On 07.12.2021, the 2<sup>nd</sup> accused appeared before the court and represented that he is also representing the 1<sup>st</sup> accused partnership firm and wanted to proceed with the case. Since, the 1<sup>st</sup> and 2<sup>nd</sup> accused wanted to plead guilty, the case against them was split up as CC.No.1775/2021 and the same was disposed of on 21.08.12.2021. This case in CC.No.2791/2014 is being continued against these accused.

4. Today, the accused 3 to 5 appeared. The counsel for the accused 3 to 5 informed that they already have the copies of records as they filed CrI.OP.No.25784/2015. The offence under Section 27(d) of Drugs and Cosmetics Act carries maximum punishment of imprisonment up to 2 years. Therefore, summons procedure is followed. After giving sufficient time, today when the substance of charge was put to the accused 3 to 5, they pleaded guilty and filed guilty memo.
5. According to the complainant, on 15.11.2011, the Drugs Inspector Mr.Mukesh Kumar, drawn sample of drug '**Oflovis (Ofloxacin Oral Suspension)**', Batch No.POX-11012, manufactured in 05/2011 and expires in 04/2013 from a Medical Store - M/s.Venus Agency, at NO.5, Nyniappa Naicken Street, Chennai-3. The said drug was manufactured by the 1<sup>st</sup> accused Firm. On chemical analysis, the sample was found to be not of standard quality. In the Analysis Report 21.09.2012, the Government Analyst, found that the sample does not conform to claim with respect to the content of Ofloxacin. In the Analysis Report, it is stated that the said batch of drug contained 68.77% of the Ofloxacin, instead of allowed limit of 90% to 110%.
6. After ascertaining that it was the 1<sup>st</sup> accused, who manufactured the said drug, the complainant sent the show cause memo dated 11.04.2013 to the 1<sup>st</sup> accused along with copy of Analysis Report and one of the samples in sealed cover. On 11.04.2013 an investigation was conducted at the premises of 1<sup>st</sup> accused firm and found that the accused have not adhered to manufacturing practice as per Schedule M of Drugs and Cosmetics Act. It is stated that no reply has been sent by the accused within the period of 30 days. Thereafter, in order to prosecute the accused, on 18.04.2013, the complainant applied with Drugs Controller General (India) for Sanctino for Prosecution. The sanction was granted on 13.05.2013. Thereafter, the complainant filed this private complaint for the offence under Section 18(a)(i), which is punishable under Section 27(d) of Drugs and Cosmetics Act.

7. Already the 1<sup>st</sup> and 2<sup>nd</sup> accused admitted their guilt. Now, the accused 3 to 5 themselves have accepted their fault and pleaded guilty. Considering the same, this court accepts the said plea. Thereby, the accused 3 to 5 are found guilty of offence u/s 18(a)(1) R/w 27(d) and 18B R/w 28A of Drugs and Cosmetics Act 1940. Now the punishment to be awarded to the accused has to be decided.
8. Section 27(d) carries a minimum punishment of one year imprisonment with a maximum punishment of two years has been prescribed. Apart from the same, a fine not less than Rs.20,000/- has to be imposed. At the same time, the court, by assigning adequate and special reasons, can impose lesser sentence of imprisonment. The learned counsel for accused submitted that the alleged violations are not serious and no injury or harm has been caused to any public.
9. On reading, the penal provisions of Section 27 of Drugs and Cosmetics Act, various punishment for various kinds of offences have been provided. Section 27(d) is a residuary provision for imposing punishment for the offences that do not come under section 27(a) to 27(c) of the Act. Section 27(d) includes punishment for various serious offences such as selling expired drugs or selling the drug without any licence, etc. and also for lesser offences such as minor violation of conditions of licence. In this case, the accused have incense to manufacture the drugs. One batch of drugs manufactured by the 1<sup>st</sup> accused failed to satisfy the required quality. It is not the case of the prosecution that there is any injury or harm caused to any public. Further, it is not the case of prosecution that the accused had previously indulged any violations. The accused assured that this type of lapses will not occur in future. Therefore, the accused deserves lenient consideration by this court. Considering, all these aspects, it is appropriate to impose a punishment that the accused shall be kept in custody till raising of this court.
10. With regard to imposition of fine, there is no scope for reduction of the minimum fine amount of Rs.20,000/-. The accused have supplied '**Oflovis (Ofloxacin Oral Suspension)**' to various sellers and distributors. The said drug has been widely used by the public. Since, the 1<sup>st</sup> accused is the manufacturer of the drugs and it is supposed to maintain the required quality all the time. However, the accused 3 to 5 are not managing partners. Considering the same, minimum fine of Rs.20,000/- can be imposed.

11. Section 28A prescribe punishment upto one year or fine not less than Rs.20,000/- or both. Considering the above mentioned reasons, it is sufficient to impose minimum fine of Rs.20,000/- for this offence.
12. In result, the accused 3 to 5 are found guilty of offence under Section 18(a)(1) R/w Section 27(d) and 18B R/w 28A of Drugs and Cosmetics Act 1940. They are convicted and for the offence u/s.27(d) the accused 3 to 5 are sentenced to undergo Simple Imprisonment of one day till rising of the court and pay a fine of Rs.20,000/- each. For the office u/s.28A, the accused 3 to 5 shall pay a fine of Rs.20,000/- each. In default, the accused 3 to 5 shall also undergo further Simple Imprisonment for one more month. Total Fine Rs.(20,000 + 20,000) x 3 = 1,20,000/-.

Since, the 1<sup>st</sup> and 2<sup>nd</sup> accused already paid Rs.1,500/- for effecting paper publication under Section 35 of the Act, the accused 3 to 5 need not pay for the same.

Property Order:

No property is produced

Dictated to the Steno-typist, who directly typed into the computer, corrected and pronounced by me in open court on this the 16<sup>th</sup> day of February 2022

XV Metropolitan Magistrate  
George Town, Chennai

Note :

1. Fine imposed and collected.
2. The result of the case is intimated to complainant