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Crl.O.P.No.9439 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No 9439 of 2023
and Crl.M.P.Nos.6142 & 6143 of 2023

Jithendar Singh
Proprietor,
M/s. Rathore Mehendi Centre,
No.7/9, Chandrasekar Nagar 7th Street,
Manalli Road, Kodungaiyur,
Chennai – 600 118.

..Petitioner(s)

Vs

The State Of Tamil Nadu
Represented By its
Senior Drugs Inspector,
O/o The Assistant Director of Drugs Control,
Zone-I, DMS Campus,
259-261, Annasalai,
Teynampet, Chennai – 600 006.

..Respondent(s)

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.6575 of 2022 on the file of the X Metropolitan Magistrate and quash the same.

For Petitioner(s):

Mr.Kaushik N Sharma

For Respondent(s):

Mr.L.Baskaran
Government Advocate (Crl. Side)



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ORDER

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This petition has been filed to quash the proceedings in C.C.No.6575 of 2022 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai, thereby taking cognizance for the offence punishable under Section 27-A(ii) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as “the Act”) as against the petitioner.

2. The respondent lodged complaint as against ten accused persons for the contravention of Sections 18(c), 18(a)(ii) and 18(b) of the Act which is punishable under Section 27-A(ii) of the Act, alleging that the first accused had manufactured mehendi cones for sale without having requisite licence and sold the same to various dealers including M/s. Sri Shiv Fancy. Further the tenth accused had also purchased the mehendi cones from the first accused who was not having requisite cosmetic manufacturing licence. Further A10 had purchased the misbranded cosmetics i.e., mehendi cone from the manufacturer ie., first accused without any labels on it and without the particulars including batch number, manufacturing date, expiry date, name and address of the manufacturer, net content etc. Thus it is a contravention of Section 18(c) of the Act for having been manufacturing and selling the cosmetics without having a valid cosmetics manufacturing license, which is punishable under Section 27-

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A(ii) of the Act. Further the accused contravened the provision under Section 18(a)(ii) of the Act r/w Rule 148 of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as “the Rules”) for having been manufacturing and selling the cosmetics without proper labelling which is punishable under Section 27-A(ii) of the Act. On the complaint, the trial Court had taken cognizance and issued summons to the accused persons.

3. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as first accused. He further submits that a mehendi cone is not a cosmetic and it doesn't require any license for manufacturing and sale. Therefore, there is absolutely no contravention under Sections 18(c), 18(a)(ii) and 18(b) of the Act. The petitioner is being a member of mehendi Promoting Association of India, requested certain clarification and guidance for the manufacture and sale of mehendi/henna paste in cone and also requested to put on hold all the proceedings. Further henna paste is not covered under the classification for cosmetic raw materials under the Rules. It is being a marriage seasonal product only few merchants and manufacturers are involved in this business.



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3.1. He further submitted that mehandi is a natural leaf, powdered and converted into paste with some additives and filled in cones and marketed as mehandi paste/ henna paste in cone and it is used as skin decorative widely accepted by the public. He also submitted that the henna powder is coming under Schedule S item No.28 of the Act and as such no license is required to manufacture or sell. In support of his contention, he relied upon the judgment of the Bombay High Court in ***Criminal Application No.3956 of 2015*** dated ***18.09.2016*** in the case of ***Chutararam & anr Vs. State of Maharastra***, which held that no license is required to manufacture mehandi cone or mehandi powder for sale or for distribution. It was further held that by referring the provisions of Rule 138 of the Rules, if the product mehandi is not categorized in Schedule M-II, there is no question of obtaining any license for manufacturing the same for sell or for distribution.

3.2. He also relied upon the judgment of the Hon'ble Karnatka High Court in ***Criminal Petition No.5257 of 2019*** dated ***22.09.2020*** in the case of ***M/s. Singh Mehendi Industries & anr Vs. State of Karnataka***, which held that the henna powder has been taken from outside as a raw material and the same has been used for the purpose of manufacturing the mehandi cone by using the said material in a prescribed quantity of other mixture. Therefore, for



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the purpose of manufacturing mehendi cone, no license is required and there is material to come to a conclusion that henna powder is also manufactured at the manufacturing unit of the accused. It was further held that as per Sections 138, 139 & 142 along with Schedule M II, no license is required to manufacture mehendi cone or mehendi powder for sale or distribution. As per Rule 150A of the Rules, standard for cosmetics is prescribed in Schedule S and in Schedule S item No.28 is henna powder. It is stated in Schedule S that cosmetics as listed in the schedule in finished form shall conform to the Bureau of Indian Standards (BIS) specification laid down from time to time by the Bureau of Indian Standards. Insofar as the henna powder is concerned, specification for Indian standard is mentioned as IS:11142. Even on plain reading of the contents of the complaint, it doesn't specifically say that the petitioner is a manufacturer of henna power. Therefore, Schedule S cannot be attracted as against the petitioner.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent filed counter and submitted that definition of cosmetics in the Act is mentioned in Section 3(aaa) of the Act and it says that cosmetic means any article intended to be rubbed, poured, sprinkled or sprayed on or introduced into, or otherwise supplied to the human body or any part

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thereof for cleansing, beautifying, promoting attractiveness or altering the appearance and includes any article intended for use as a component of cosmetic. As per Rule 150A of the Rules, the standards for cosmetics shall be such as may be prescribed in schedule S. In Schedule S item No.28 is the henna powder. Henna powder is the raw material for manufacturing of mehendi cone and it is applied to the human body for the purpose of beautification. Therefore, mehendi cone shall be classified as cosmetics as per the Act.

4.1. He further submitted that Schedule M-II of the Act deals with the requirement of competent technical staff, manufacturing plant, testing equipment and the requirements of plant and equipment for the manufacturing of cosmetics. Category B of Schedule M-II is about creams, lotions, emulsions, pastes, cleaning milks, shampoos, pomade, brilliantine, shaving creams and hair oil etc. It includes the formulations in paste form and the mehendi cone contains the henna powder in paste form by mixing the powder with other ingredients. Therefore, it comes under Category B of Schedule M-II. Therefore, the respondent rightly initiated prosecution for the contravention of Sections 18(c), 18(a)(ii) and 18(b) of the Act which is punishable under Section 27-A(ii) of the Act. Hence, he prayed for dismissal of the quash petition.



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5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. The only point arising in this case for consideration is that whether the manufacturing, stocking and distribution of mehendi cone require any licence under Section 18(c) of the Act?

7. The petitioner is arrayed as A1 in the complaint lodged by the respondent under Section 200 of Cr.P.C., for the contravention of Sections 18(c), 18(a)(ii) and 18(b) of the Act which is punishable under Section 27-A(ii) of the Act. Having been satisfied with the allegation made in the complaint as against the accused persons, the Trial Court had taken cognizance and issued summons. Though “henna paste” is not covered under the classification of cosmetic raw materials under the Rules, the term “cosmetics” under the Act is defined under Section 3(aaa) of the Act as follows :-

“3. Definitions.—In this Act, unless there is anything repugnant in the subject or context,

.....

(aaa) — cosmetic means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing,



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beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic”

8. Further Rule 150A of the Rules states that the Standards for cosmetics shall be such as may be prescribed in Schedule S. It shall conform to the Indian standards specifications laid down from time to time by the Bureau of Indian Standards. Henna powder is the main ingredient to manufacture a mehendi cone. The mehendi cone contains the henna power in paste form by mixing the powder with purified water, clove oil and eucalyptus oil. It is applied to human body parts like hand, arm, leg etc., for beautification purposes. Therefore, it falls under the definition of “cosmetics” as per the Act. Further the henna power is very much present in Schedule S in serial number 28 of the Act.

9. Rule 139A of the Rules governs the licence to manufacture cosmetics for sale or for distribution wherein manufacturers shall apply for grant or renewal of a licence in Form 31 and upon satisfaction and inspection, the licence shall be granted in Form 32. Schedule M-II of the Act deals with the requirements of competent technical staff, manufacturing plant, testing



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equipment and requirements of plant and equipment for the manufacturing of cosmetics. Category B of Schedule M-II of the Act lists down creams, lotions, emulsions, pastes, cleansing milks, shampoos, pomade, brilliantine, shaving creams and hair oils etc. Therefore, it includes the formulations that are in paste form. Mehendi cone contains henna powder in paste form wherein the powder is mixed with other ingredients. Therefore, it comes under the Category B of Schedule M-II.

10. That apart, as per Rule 150A of the Rules and Schedule-S of the Act, obtaining of license is made mandatory. As per serial number 28 of the Schedule S, the mehendi cone is nothing but a cosmetic product and the license is mandatory for its production, sale and distribution. It is relevant to extract the Rule 150 A of the Drugs and Cosmetics Rules, as follows :-

"150-A. Standards for cosmetics:- Subject to the provisions of these rules, the standards for cosmetics shall be such as may be prescribed in Schedule-S.

SCHEDULE S [See Rule 150-A] Standards for Cosmetics:- Standards for cosmetics in finished form:- The following cosmetics in finished form shall conform to the Indian Standard specifications laid down from time to time by the Bureau of Indian Standards (BIS).

1. Skin powder



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- 2. Skin powder for infants*
- 3. Tooth powder*
- 4. Tooth paste*
- 5. Skin creams*
- 6. Hair oils*
- 7. Shampoo Soap based*
- 8. Shampoo synthetic-detergent based*
- 9. Hair Creams*
- 10.Oxidation hair dyes, liquid*
- 11.Cologne*
- 12.Nail polish (Nail enamel)*
- 13.Aftershave lotion*
- 14.Pomades and Brilliantines*
- 15.Depliatories chemicals*
- 16.Shaving creams*
- 17.Cosmetic pencils*
- 18.Lipstick*
- 19.Toilet soap*
- 20.Liquid toilet soap*
- 21.Baby toilet soap*
- 22.Shaving soap*
- 23.Transparent toilet soap*
- 24.Lipsalve*
- 25.Powder hair dye*
- 26.Bindi (liquid)*
- 27.Kum Kum powder*



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28.Henna powder

29.Bathing bars

30.Sindoor

31.Liquid foundation make-up

32.Cold wax-hair remover

33.Face pack

34.Kajal

35.Oxidation hair dyes

36.Cream bleach.

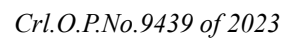
Schedule M-II [See Rule 139] Requirements of factor premises for manufacture of cosmetics:-

.....

B. Creams, lotions, emulsions, pastes, cleansing milks, shampoos, pomade, brilliantine, shaving creams and hair oils, etc."

Therefore, the manufacturing details such as batch number, manufacturing licence number, use before etc., on the label are very much required.

11. In the case on hand, admittedly the petitioner has no license to manufacture the mehendi cone. Thus it is in violation of provision under Section 18(c) of the Act which is punishable under Section 27-A(ii) of the Act. Since the petitioner had manufactured the mehendi cone and stocked the same for sale and sold it without appropriate labelling, he had thereby acted in contravention to the provisions under Sections 18(a)(ii) and 18(b) of the Act which punishable under Section 27-A(ii) of the Act.



"12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.”

13. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated ***17.10.2019*** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the



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submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

14. Further the Hon'ble Supreme Court of India also held in the judgment dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with



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or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to the case on hand and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, the petitioner is at liberty to raise all the ground before the Trial Court and it is yet open to the Trial Court to consider the same on merits and in accordance with law and complete the trial within a period of three months from the date of receipt of copy of this Order.

15. With above directions, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

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1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. The Senior Drugs Inspector,
O/o The Assistant Director of Drugs Control,
Zone-I, DMS Campus,
259-261, Annasalai,
Teynampet, Chennai – 600 006.
3. The Public Prosecutor,
Madras High Court,
Madras.



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G.K.ILANTHIRAIYAN. J,

rts

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and Crl.M.P.Nos.6142 & 6143 of 2023

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