

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Crl.MC.No. 4234 of 2013 ()

**AGAINST ST.NO.2011/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III,
KOTTAYAM**

PETITIONER(S)/ACCUSED:

**1. M/S.SREEDHAREEYAM AYURVEDA MEDICINES PVT. LTD.,
K.G.P. V/485F, V/485G, KIZHAKOMBU.P.O.,
KOTHATTUKULAM, ERNAKULAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
SHRI HARI. N. NAMBOOTHIRI.**

**2. SHRI. HARI N. NAMBOOTHIRI,
MANAGING DIRECTOR,
M/S. SREEDHAREEYAM AYURVEDA MEDICINES PVT. LTD.,
K.G.P. V/485F, V/485G, KIZHAKOMBU.P.O.,
KOTHATTUKULAM, ERNAKULAM.**

BY ADV. SRI.P.DEEPAK

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY THE DRUGS INSPECTOR,
OFFICE OF THE ASSISTANT DRUGS CONTROLLER,
KOTTAYAM-686 001.**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE.A. CERTIFIED COPY OF THE COMPLAINT DATED 17-12-12 IN S.T. NO. 2011 OF 2012 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, KOTTAYAM.

ANNEXURE.B. A TRUE COPY OF THE 'MASTER FORMULA RECORD' CONTAINING THE ENDORSEMENT REGARDING RENEWAL OF LICENCE.

ANNEXURE.C. A TRUE COPY OF THE PRODUCT PROFILE OF 'SREEDHARIYAM SMART-LEAN' CAPSULES.

ANNEXURE.D A TRUE COPY OF THE MAHASSER DATED 27-12-11.

ANNEXURE.E A TRUE COPY OF THE NOTIFICATION OF THE CENTRAL GOVERNMENT (G.S.R. 843)

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

=====

Crl.M.C.No.4234 of 2013

=====

Dated this, the 20th day of February, 2015.

O R D E R

This petition is filed by the accused in S.T.No.2011/2012 pending before the Judicial First Class Magistrate Court-III, Kottayam to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. The allegation was that there was some products were manufactured by the first petitioner - Company contains certain assurance regarding the curing of disease by using that medicine and that was said to be in violation of the provisions of Section 3(d) read with Section 7(a) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (hereinafter called 'the Act') and on that basis, a complaint was filed by the Drugs Inspector against the petitioners being the Company and the manufacturer represented by its Managing Director. According to the petitioners, this will not come under the offence provided under Section 3(d) read with Section 7(a) of the above said Act and it is protected by a notification issued by the Central Government produced as

Annexure E. So, the proceeding with the case will amount to abuse of process of court. So, they filed this petition seeking the following relief:

*"To call for the records in **S.T.No:2011 of 2012** on the files of the **Judicial First Class Magistrate's Court-III**, Kottayam, and quash the same in exercise of powers conferred under Section 482 of the Code of Criminal Procedure."*

3. When the application came up for hearing today, the Counsel for the petitioners produced an order of this court in Crl.M.C.No.1045/2014 and connected cases, in which, similar matter was considered by this court and dismissed the application stating that, it is a matter for evidence and that cannot be considered at this stage leaving open the right of the petitioner to raise all the contentions before the court below and submitted that in view of the above decision, the petition also can be disposed of accordingly.

4. Since this court has already come to the conclusion in Crl.M.C.No.1045/2014 and connected cases dated 27.06.2014, in an identical matter that, it is not a matter for this court to quash the proceedings invoking the power under Section 482 of Code of Criminal Procedure and it is a matter

for evidence and petitioner has to adduce the evidence to prove whether the literature is exempted under the Government notification relied on by them and it is for the trial court to consider and pass appropriate orders, this court also feels that the same yardstick has to be applied to this case also and so, in view of the finding of the learned Single Judge in a similar matter in Crl.M.C.No.1045/2014 and connected cases, this court also feels that it is not a fit case for invoking the power under Section 482 of the Code of Criminal Procedure to quash the proceedings at this stage. The petitioners are at liberty to raise all the contentions raised by them before this court before the trial court and the trial court is at liberty to consider and dispose of those objections on the basis of the evidence available strictly in accordance with law.

With the above observation and direction, the petition is disposed of.

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge