

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

Crl.MC.No. 7223 of 2014 ()

AGAINST THE JUDGMENT IN STC 1908/2009 of J.M.F.C., THALASSERY

PETITIONERS/PETITIONERS/ACCUSED:

1. M/S.ADROIT PHARMACEUTICAL PVT LTD
46, GARBIA MAIDAN, BASTI PRECINCT
NAGPUR-440008 REPRESENTED BY DIRECTOR
DR. ABHIMANYU H.KUKREJA.

2. DR.ABHIMANYU H.KUKREJA
DIRECTOR, M/S. ADROIT PHARMACEUTICAL PVT. LTD., 46
GARBIA MAIDAN, BASTI PRECINCT, NAGPUR-440008.

3. SANJAY C.KUKREJA
DIRECTOR, M/S. ADROIT PHARMACEUTICAL PVT. LTD., 46
GARBIA MAIDAN, BASTI PRECINCT, NAGPUR-440008.

4. BHUPESH KUKREJA
DIRECTOR, M/S. ADROIT PHARMACEUTICAL PVT. LTD., 46
GARBIA MAIDAN, BASTI PRECINCT, NAGPUR-440008.

BY ADVS.SRI.S.U.NAZAR
SRI.B.VINOD
SRI.I.V.PRAMOD
SRI.MANSOOR.B.H.
SMT.P.USHAKUMARI

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. THE DRUGS INSPECTOR
INTELLIGENCE BRANCH
OFFICE OF THE ASSISTANT DRUGS CONTROLLER
SOUTH BAZAR, KANNUR-670002.

2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY PUBLIC PROSECUTOR REJI JOSEPH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' ANNEXURES.

ANNEXURE A1: A CERTIFIED COPY OF THE COMPLAINT FILED BY THE 1ST
RESPONDENT DATED 13.8.2009.

ANNEXURE A2: A CERTIFIED COPY OF THE CERTIFICATE OF GOVERNMENT ANALYSIS
DATED 10.2.2009 OF THE GOVERNMENT ANALYST, DRUGS TESTING LABORATORY,
THIRUVANANTHAPURAM.

ANNEXURE A3: A TRUE COPY OF THE CERTIFICATE OF ANALYSIS NO.2-1/2009-
SS/CC-127/714 DATED 11.9.2009 OF THE DIRECTOR, CENTRAL DRUGS LABORATORY.

RESPONDENTS' ANNEXURES: NIL

/TRUE COPY/

P.S TO JUDGE

K. RAMAKRISHNAN, J.

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Crl.M.C.No.7223 of 2014
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Dated this the 1st day of December, 2015

O R D E R

This petition is filed by the petitioners to quash the proceedings in STC.No.1908/2009 on the file of the Judicial First Class Magistrate Court, Thalassery under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that petitioners were arrayed as accused 1 to 4 in STC.No.1908/2009 on the file of the Judicial First Class Magistrate Court, Thalassery facing prosecution under the provisions of the Drugs and Cosmetics Act. The complainant, Drug Inspector, sought to prosecute M/s.Adroit Pharmaceuticals Pvt.Ltd and three of its Directors for the offence under section 18(i)(a) read with 27(d) of the Drugs and Cosmetics Act, 1940. The petitioners appeared before the learned Magistrate and they were enlarged on bail. The Drug Inspector had not caused any investigation as to who is responsible for the day-to-day affairs of the company as per section 34 of the Drugs and Cosmetics Act and the procurement of sample is illegal and in violation of section 23(2) of the Drugs and Cosmetics Act. Annexure A3 does not contain the full 'protocol of analysis' as mandated under Rule 46 of the

Drugs and Cosmetic Rule, 1945. Since it was not mentioned as to who is responsible for the day-to-day affairs of the company, the complaint is not maintainable in view of the dictum laid down in **State of Haryana v. Brij Lal Mittal and others** (1998 5 SCC 343). So the petitioners have no other remedy except to approach this Court to quash the proceedings.

3. Considering the fact that the case is of the year 2009, this Court has called for a report from the Judicial First Class Magistrate Court, Thalassery as to whether particulars of offence were read over or not. If particulars of offence were read over, then it is not possible for the court below to consider the question as to whether complaint is maintainable or not. On the basis of the directions of this Court, a report has been received from the Judicial First Class Magistrate Court, Thalassery stating that particulars of offence have not been read over in this case and the Magistrate had informed the counsel for the accused and the complainant that if they are able to convince that there is no particulars of offence to be read over to the accused, further proceedings can be dropped in view of the dictum laid down in **Anandavel v. Food Inspector** (2010 (3) KLT 49).

4. Heard Sri. B.H Manzoor, counsel appearing for the petitioners and Sri. Reji Joseph, Public Prosecutor appearing for the respondents.

5. Considering the fact that no particulars of offence have been read over, in view of the dictum laid down in the decision reported in **Anandavel's case** (cited supra), the Magistrate will not be precluded from prematurely terminating the proceedings. It is also mentioned in the report that particulars of offence have not been read over to the accused persons so far. So the petitioners are at liberty to convince the court below in view of the dictum laid down in the decision reported in **Anandavel's case** (cited supra) that even if the entire allegations are accepted, there is no ingredient of offence made out for the purpose of reading of particulars of offence as against the petitioners and if they were able to convince the Magistrate regarding the same, the Magistrate is at liberty to consider the same and pass appropriate orders in view of the dictum laid down in **Anandavel's case** (cited supra). So under the circumstances when such a remedy is available to the petitioners, this Court feels that it is not a fit case to invoke the power under section 482 of the Code to quash the

proceedings at this stage. This petition is disposed of with liberty to the petitioners to raise the contentions before the Magistrate as no particulars of offence have been read over so far and the Magistrate shall consider the same and dispose of the same in view of the dictum laid in **Anandavel's case** (cited supra). Till then, the petitioners can be permitted to appear through their counsel.

Interim stay granted is vacated and Crl.M.A. No.11650/2014 is dismissed.

With the above directions and observations, this petition is disposed of. Office is directed to communicate a copy of this order to the court below at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/
P.S to Judge

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