

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.17648 of 2015
and M.P.No.1 of 2015

1.Adhiyaman
2.Sivakumar

.. Petitioners
Vs.

The State,
Rep. by Drug Inspector,
Sholinganallur Range,
Kanchipuram Zone,
Chennai. .. Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records in respect of the complaint filed in
C.C. No.173 of 2015 on the file of the Chief Judicial Magistrate,
Chengalpattu and quash the same.

For Petitioners :: Mr.S.Thiruvengadam
For Respondent :: Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed praying to call
for the records in respect of the complaint filed in C.C. No.173 of
2015 on the file of the Chief Judicial Magistrate, Chengalpattu and
quash the same.

2. Heard the learned counsel appearing for the petitioners and
the learned counsel appearing for the respondent.

3. It is seen that the Drug Inspector conducted inspection of
M/s.Mother's World, a Pharmaceutical Company on 13.08.2014 and found
certain contraventions of the provisions of the Drugs and Cosmetics
Act, 1940. The Authorities issued a show cause notice to M/s.Mothers
World, calling for explanation and one of the partners by name
K.P.Vaidyalingam, appears to have given the explanation on 08.09.2014
for the show cause notice.

4. Thereafter, the Drug Inspector submitted a proposal to the
Director of Drugs Control to grant sanction for prosecuting
M/s.Mother's World and three others, for the contravention of the
provisions of the Drugs and Cosmetics Act 1940. After obtaining the

sanction, the prosecution has been filed, which has been taken on file as C.C.No.173 of 2015, by the learned Judicial Magistrate, Chengalpattu, challenging which, the petitioners are before this Court.

5. Mr.S.Thiruvengadam, the learned counsel appearing for the petitioner/A3 and A4 relied upon the judgment of Bombay High Court in Narendrakumar Dani & Others Vs. State of Maharashtra & another [2002 (1) Crimes 746] and submitted that the complaint does not disclose the requirements of fastening vicarious criminal liability on the petitioners.

6. Per contra, the learned Additional Public Prosecutor brought to the notice of this Court, the licence that has been issued to M/s.Mother's World, wherein the names of the petitioners find a place as the license holders.

7.Mr.S.Thiruvengadam, submitted that these petitioners are sleeping partners and produced the partnership deed of Mother's World.

8. This Court cannot go into the partnership deed produced along with typed-set of papers and give a finding on a petition filed under Section 482 Cr.P.C., whether the partners were only sleeping partners, which is a question of fact that has to be gone into only during trial.

9.The learned Additional Public Prosecutor also submitted that the partnership deed that is being relied upon by the petitioner is subsequent to the date of inspection.

10. In this case, when the license is standing in the name of the petitioners herein, the principles of vicarious liability enunciated in the cases relating to Section 138 of N.A. Act cannot be imported. The sanction to prosecute has also been obtained against all the petitioners.

11.Under such circumstances, this Court is of the view that this is not a fit case for interference. The petition is dismissed and whatever observed herein is only limited for deciding the quash petition. It is always open to the petitioners to take these defences before the Trial Court.

12. Consequently, connected, miscellaneous petition are closed.

ds

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Drug Inspector,
Sholinganallur Range,
Kanchipuram Zone,
Chennai.

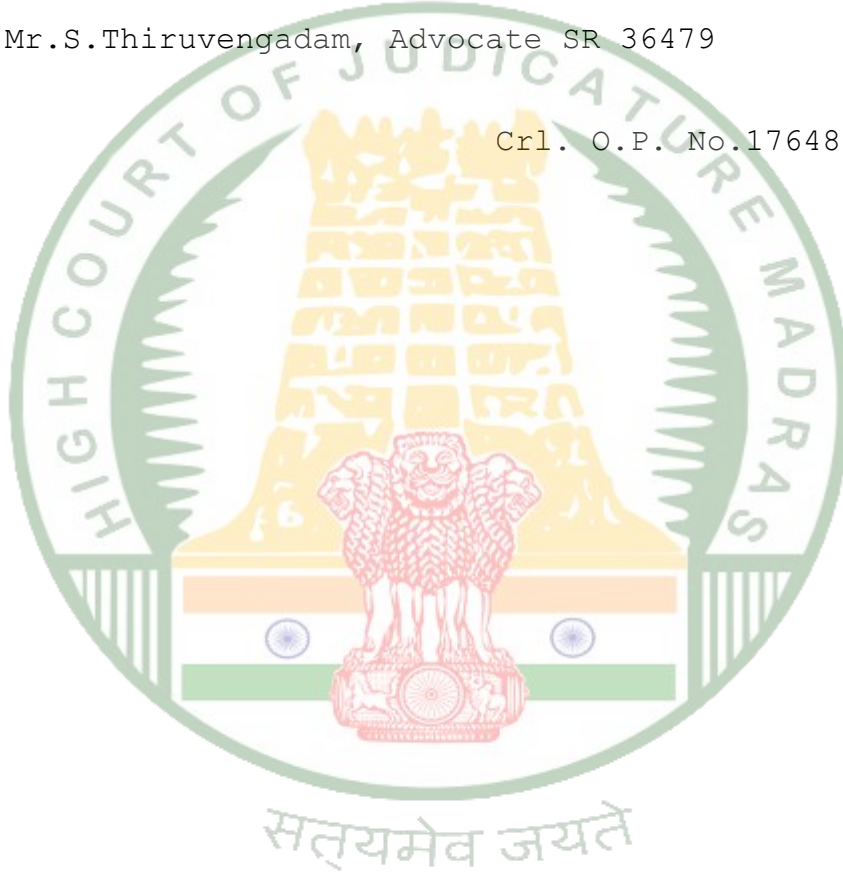
2. The Public Prosecutor,
High Court, Madras.

3. The Chief Judicial Magistrate,
Chengalput.

+ 1 cc to Mr.S.Thiruvengadam, Advocate SR 36479

ad(co)
prk3/8

Crl. O.P. No.17648 of 2015



WEB COPY