

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2015  
DELIVERED ON : 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.3859 of 2015  
and M.P.Nos.1 and 2 of 2015

M.P.Meenakshisundaram

.. Petitioner/Accused 2

vs.

The Deputy Superintendent of Police  
Crime Branch, CID, Villupuram.

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to C.C.No.71 of 2011 on the file of the learned Judicial Magistrate No.III, Cuddalore and quash the charge sheet dated 24.1.2011.

For Petitioner : Mr.A.Chidambaram  
For Respondent : Mr.C.Emalias, APP

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State.

2. The petitioner, who has been arrayed as second accused, is seeking to quash the criminal prosecution in C.C.No.71 of 2011 for offences under Sections 18(a)(1) r/w 27(d), 17(B)(e) r/w 27(c), 18(c) r/w 27(b) (ii) Drugs and Cosmetics Act 1940, 120(B), 114, 465, 468, 471, 420 IPC and r/w 120(B), 109 r/w 34 IPC.

3. The case of the prosecution is best set out in the Final Report itself as under:

"This is a case of preparation and selling of spurious drugs. On 17.03.2010 Thiru S.Gurubarathi, Drugs Inspector, Cuddalore Range, conducted a surprise raid at M/s Selva Vinayagar Agencies, No.21 Pidariamman Kovil Street, Thirupapuliur, Cuddalore and found 2704 bottles of spurious Benadryl Cough Formula 150ml at the said shop and seized and initiated action under Section 22(i)(c) and 18(c) Drugs and Cosmetics Act, 1940. During the investigation he learned that accused Valliappan had committed certain offences punishable under IPC Act. Hence, he lodged a complaint to the police and a case in Thirupapuliur PS Cr.No.188/2010 u/s 274, 420 and 328 IPC was registered on 23.03.2010.

A1 is the firm "M/s Selva Vinayagar Agencies" in whose name all the clandestine acts were committed by A4 Valliappan who was running the business on behalf of the said firm represented by A2 Meenakshisundaram @ Sankar and A3 Chandrasekaran the license of the said firm.

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A2 Meenashisundaram and A3 Chandrasekaran are the owner of M/s Selva Vinayagar Agencies pharmacy and the license is issued by Assistant Director Drugs Control, Trichirapalli in favour of them. They have willfully allowed A4 Valliappan in doing the business according to his whims and fancy which lead to him to indulge in such clandestine acts."

4. Mr.A.Chidambaram, learned counsel for the petitioner submits that the petitioner is only a sleeping partner in "M/s Selva Vinayagar Agencies" and there are serious allegations against him. He submitted that for fastening criminal liability vicariously, there should be sufficient averments that the accused was actively involved in the affairs of the Firm. The learned counsel submitted that, the accused was always abroad staying and that he was not involved in the day to day affairs of "M/s Selva Vinayagar Agencies". In support of his contention, he relied upon the judgment of this Court in Concept Pharmaceuticals Pvt. Ltd. v. State of Tamil Nadu [ 1992 (58) ELT 6 (Mad)].

5. The respondent police have filed a counter, in which, in paragraphs 5,6,7 and 8 it is stated as follows:

"This is a case of preparation and marketing of substandard drugs by M/s Selvavinayagar Agencies, No.21, Pidariamman Koil Street, Thirupapuliur Cuddalore. In this case the accused persons purchased Aldex cough formula which is a low quality cough syrup and marketed the same as Benadryl cough formula a high quality cough syrup by removing the label of Aldex cough formula and by affixing the label of Benadryl cough formula.

6. Initially this case was registered in Thirupapuliur Police Station Crime Number 188/2010 u/s 274, 420 and 328 IPC on 23.03.2010 on the complaint of Tr.S.Gurubharathi, Drugs Inspector, Cuddalore Range and investigated by Inspector of Police, Thirupapuliur Police Station. Subsequently, the investigation of this case was transferred to the Deputy Superintendent of Police, Crime Branch, C.I.D.,

Villupuram Range vide orders in RC No.C5/6754/2010, Dt.06.04.2010 of Additional Director General of Police, Crime Branch, C.I.D., Chennai.

7. The investigation of this case was taken over by the then Deputy Superintendent of Police, Crime Branch, C.I.D., Villupuram Range Tr.T.Kanniappan on 06.04.2010. During the course of investigation the I.O has examined 63 witnesses and completed investigation and filed final report on 24.01.2011 before Judicial Magistrate-III Court, Cuddalore. The court assigned CC.No.71/2011 on 27.06.2011.

8. Non Bailable Warrant was issued against this petitioner/accused-2 on 27.06.2011 by Judicial Magistrate-III Court, Cuddalore. Subsequently on 13.01.2014 Look out circular was issued against this petitioner as a result of which he was apprehended by immigration authority personnel of Chennai Airport on 18.10.2014. The petitioner Tr.Meenakshisunaram was produced before Judicial Magistrate No.III Court, Cuddalore and executed the Non Bailable Warrant. This case is pending for furnishing copies to the accused persons and committal to Chief Judicial Magistrate Court, Cuddalore."

6. The learned Additional Public Prosecutor submitted that the drug licence has been issued by the Assistant Director of Drugs Control, Tiruchirapalli Zone, in the name of E.Chandrasekar [A3] and this petitioner. The drug licence very clearly states "The sale shall be made under the personal supervision of a competent person 1.Tr.E.Chandrasekar, 2.Tr.Meenakshi-sundaram."

7. In the teeth of the aforesaid condition of licence, the petitioner cannot be heard to say that, he was not involved in the business and that he was only a sleeping partner. The allegations against the petitioner are very serious, inasmuch as the petitioner has been selling adulterated cough syrup to the public and with great difficulty, the police had apprehended him as he was hiding abroad.

In view of the existence of sufficient materials against the petitioner, showing his involvement in the sale of spurious drugs, this is not a fit case to quash the prosecution and accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/> //True Copy//

Sub Assistant Registrar

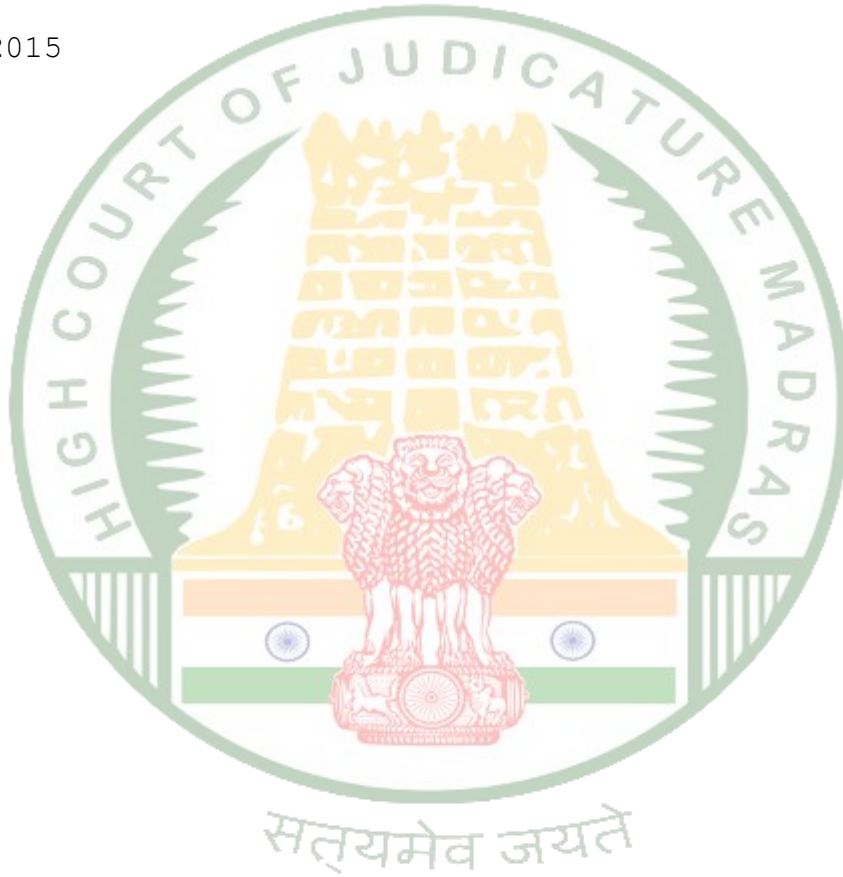
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To

1. The Deputy Superintendent of Police  
Crime Branch, CID, Villupuram.
2. Judicial Magistrate No.III, Cuddalore.
- 3.The Public Prosecutor, High Court, Madras.

CrI.O.P.No.3859 of 2015

SR(CO)  
Eu 20.05.2015



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